No. (1)

Supreme Court, U.S.
FILED
04-1461 APR 26 2005
OFFICE OF THE CLERK

In The
Supreme Court of the United States

JOSEPH RAYMOND HANAS,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeals, State Of Michigan

PETITION FOR WRIT OF CERTIORARI

ERWIN CHEMERINSKY
Counsel of Record
DUKE UNIVERSITY SCHOOL OF LAW
Science Drive and Towerview Road
Durham, North Carolina 27708
(919) 613-7173

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street
New York, New York 10025
(212) 549-2500

MICHAEL J. STEINBERG
KARY L. MOSS
GREGORY T. GIBBS
GLENN M. SIMMINGTON
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
60 West Hancock Street
Detroit, Michigan 48201
(313) 578-6814

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether a Michigan trial court violated the Free Exercise or Establishment Clauses of the First Amendment by sentencing a criminal defendant who practiced Roman Catholicism to a pervasively religious drug rehabilitation program operated by an evangelical Protestant organization, where the only alternative offered to the defendant was imprisonment.

2. Whether a Michigan trial court violated the Free Exercise or Establishment Clauses of the First Amendment by sentencing a criminal defendant to jail and probation, and subsequently denying him reinstatement to a Drug Court program that would have resulted in expungement of his criminal record, when he objected that the pervasively religious drug rehabilitation program to which he had been sentenced and in which he was participating was inconsistent with his religious beliefs and demeaned his faith.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iv
Opinions Below	1
Statement of Jurisdiction	2
Constitutional Provisions Involved	2
Statement of the Case	2
Summary of Argument	8
Argument	12
I. CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT AMONG THE LOWER COURTS AND TO DECIDE A QUESTION OF NATIONAL IMPORTANCE AS TO WHETHER IT VIOLATES THE FREE EXERCISE OR ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT FOR A CRIMINAL DEFENDANT TO FACE A COERCIVE CHOICE BETWEEN IMPRISONMENT OR PARTICIPATING IN A PERVASIVELY RELIGIOUS REHABILITATION PROGRAM RUN BY A FAITH-BASED ORGANIZATION THAT IS INCONSISTENT WITH THE DEFENDANT'S OWN RELIGIOUS BELIEFS	12

TABLE OF CONTENTS – Continued

Page

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT AMONG THE LOWER COURTS AND TO DECIDE A QUESTION OF NATIONAL IMPORTANCE AS TO WHETHER IT VIOLATES THE FREE EXERCISE OR ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT FOR A COURT TO SENTENCE A CRIMINAL DEFENDANT TO JAIL AND PROBATION, AND DENY HIM REINSTATEMENT IN A DRUG COURT PROGRAM, FOR OBJECTING TO PARTICIPATING IN A PERVASIVELY RELIGIOUS REHABILITATION PROGRAM RUN BY A FAITH-BASED ORGANIZATION THAT IS INCONSISTENT WITH THE DEFENDANT'S OWN RELIGIOUS BELIEFS 16

Conclusion 21

APPENDICES

Appendix A – Transcript of the hearing of January 24, 2003.....App. 1

Appendix B – Transcripts of the hearings of February 27, 2003, and March 13, 2003.....App. 13

Appendix C – The order of the Michigan Circuit Court (County of Genesee), March 13, 2003.....App. 49

Appendix D – Transcript of the hearing of January 22, 2004.....App. 53

Appendix E – The order of the Michigan Circuit Court (County of Genesee), February 10, 2004 ....App. 63

TABLE OF CONTENTS – Continued

Page

Appendix F – The order of the Michigan Court of Appeals declining leave to appeal for "for lack of merits in the grounds presented".....App. 65

Appendix G – The order of the Michigan Supreme Court, denying review by a 4-3 vote .....App. 66

TABLE OF AUTHORITIES

Page

CASES

Arnold v. Tennessee Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997) 11, 15

Bausch v. Sumiec, 139 F.Supp.2d 1029 (E.D. Wis. 2001) 11, 14, 15

Boyd v. Caughlin, 914 F.Supp. 828 (N.D.N.Y. 1996) 11, 19

Employment Division v. Smith, 494 U.S. 872 (1990) 10, 13, 17

Feasel v. Willis, 904 F. Supp. 582 (N.D. Tex. 1995) 11, 19

In re Garcia, 106 Wash. App. 625, 24 P.3d 1091 (2001) 11, 15

Griffin v. Coughlin, 673 N.E.2d 98 (N.Y. App. Ct. 1996) 11, 18

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996) 11, 14

Lee v. Weisman, 506 U.S. 577 (1992) 10, 13, 17

O'Connor v. California, 855 F. Supp. 303 (C.D. Ca. 1994) 11, 15

Ross v. Keelings, 2 F. Supp.2d 810 (E.D. Va. 1998) 8, 10, 11, 15, 19

Scarpino v. Grossheim, 852 F.Supp. 798 (S.D. Ia. 1994) 19

Warner v. Orange Co. Dep't of Probation, 115 F.3d 1068 (2d Cir. 1996) 11, 18

STATE CONSTITUTIONAL PROVISIONS

Michigan Constitution, Art. I, §20 ..... 1, 7

TABLE OF AUTHORITIES – Continued

Page

MISCELLANEOUS

Rachel F. Calabro, *Comment, Correction through Coercion: Do State Mandated Alcohol and Drug Treatment Programs in Prisons Violate the Establishment Clause?*, 47 DePaul L. Rev. 565 (1998) 9

Michael G. Honeymar, Jr., Note, *Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does it Amount to Establishment of Religion?*, 97 Colum. L. Rev. 437 (1997) 9

National Center on Addiction and Substance Abuse at Columbia University, So Help Me God: Substance Abuse, Religion and Spirituality (2001) 9

U.S. Dep't of Justice, Office of Justice Programs, "Drug Courts Program Office, Defining Drug Courts: The Key Components," (1997) 8

U.S. General Accounting Office, "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," (GAO-05-219) (February 2005) 8

U.S. General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," 27 (GAO-02-434) (2002) 8

White House, Fact Sheet: Providing Help to Heal Americans Struggling with Addiction (2003) 9

OPINIONS BELOW

The decisions in this case are unpublished. The transcript of the hearing of January 24, 2003, in which the Michigan Circuit Court (County of Genesee) ordered Joseph Hanas to participate in the Inner City Christian Outreach Residential Program is attached as Appendix A. The transcripts of the hearings of February 27, 2003, and March 13, 2003, in which the Michigan Circuit Court (County of Genesee) ordered Hanas to jail and to probation after he objected to the pervasively religious content of the Inner City Christian Outreach Residential Program are attached as Appendix B. The order of the Michigan Circuit Court (County of Genesee), March 13, 2003, sentencing Hanas to jail and probation is attached as Appendix C. The transcript of the hearing of January 22, 2004, in which the Michigan Circuit Court (County of Genesee) denied Hanas reinstatement in the Drug Court program, which would have meant expungement of his criminal record, is attached as Appendix D. The order of the Michigan Circuit Court (County of Genesee), February 10, 2004, denying Hanas reinstatement in the Drug Court program, is attached as Appendix E.

The order of the Michigan Court of Appeals declining leave to appeal "for lack of merits in the grounds presented" is attached as Appendix F.[1]

The order of the Michigan Supreme Court, denying review by a 4-3 vote, is attached as Appendix G.

---

[1] In Michigan, the State Constitution provides that in a case, such as this one, where there is a guilty plea, appeal is only with the leave of the court. Michigan Constitution, Art. I, §20 (appeal "by an accused who pleads guilty or nolo contendere shall be by leave of the court.")

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. §1257, this Court has jurisdiction to review the May 26, 2004, decision of the Michigan Court of Appeals declining leave to appeal, following a denial of discretionary review by the Michigan Supreme Court on January 27, 2005.

CONSTITUTIONAL PROVISION INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for redress of grievances." U.S. Const., Amend. I.

STATEMENT OF THE CASE

Joseph Hanas was placed by the Michigan Drug Court in a residential treatment program run by the Pentecostal faith, the Inner City Christian Outreach Residential Program.[2] *See* App. A at App. 5-7. His only alternative to this placement was imprisonment. After taking up residence and participating in the program, Hanas objected to the Drug Court that the program was pervasively religious and demeaned his Roman Catholic faith. *See* App. B at App. at 15-21, 32-33. Hanas moved the Drug Court to

[2] For the sake of clarity, this court is referred to throughout as the "Drug Court." Its formal title is the "State of Michigan, 7th Circuit Court (County of Genesee)."

reassign him to a secular program. The Drug Court responded to his complaint and motion by removing Hanas from the Drug Court program and sentencing Hanas to jail for six months and to probation for four years. *See* App. B at App. 46-47, and App. C at 49-52. Subsequently, the court denied him reinstatement in the Drug Court program, which would have meant expungement of his criminal record. App. D. at App. 61-63; App. E. at App. 64. There was no basis for his exclusion other than his objecting to the program to which he had been assigned as being inconsistent with his religious beliefs and demeaning his Roman Catholic faith.

A. The Genesee County Drug Court Program

Genesee County Circuit Court in Michigan has created a "Drug Court" for non-violent drug offenders. Those who qualify for the Drug Court may tender a guilty plea and the court will "defer sentencing pending successful completion of the Drug Court program." *See* Genesee County Drug Court, *Program Guidelines* (pamphlet prepared by the Genesee County Drug Court). Defendants then enter the program for 12-18 months. They agree to comply with all conditions that are imposed during the term of the program, which may include drug treatment, random drug testing, counseling and "all other treatment as may be required." *Id.* at 4. Upon a defendant's "successful completion of the Drug Court program, the Prosecuting Attorney agrees to file a Nolle Prosequi (dismissal) motion . . . thereby dismissing all charges with prejudice" and there is no conviction placed on the defendant's record. *Id.* at 5.

B. Hanas is ordered to participate in the Inner City Christian Outreach Residential Program

In February 2001, Joseph Hanas was charged with possession of marijuana with intent to deliver. On March 22, 2002, he pled guilty to the charge in exchange for a Drug Court referral. Under the terms of the agreement, Hanas was required to appear for review approximately every other Thursday in the Drug Court. The Central Intake Division of Genesee Circuit Court was responsible for Hanas' drug testing and the verification of his treatment.

In January 2003, Hanas violated the conditions of his Drug Court program when he was ticketed for being a minor in possession of alcohol. On January 24, 2003, Hanas appeared for a review hearing before Genesee Circuit Court Judge Robert M. Ransom. The court decided that in order for Hanas to remain in the Drug Court program, rather than being sentenced to prison, he had to successfully complete a residential program called the Inner City Christian Outreach Residential Program. App. A at App. 5-7, 10. Hanas was given no other option if he wanted to remain in the Drug Court program, and avoid incarceration, than to participate in this specific program.[3]

---

[3] At the hearing, the only program suggested as having space available was the Inner City Christian Outreach Residential Program. App. A at App. 5-6. Subsequently, the court explained that other residential programs charged fees that Hanas could not afford. Accordingly, neither the court nor Hanas viewed them as available alternatives. App. B at App. 17.

C. Hanas is sentenced to jail and probation after he objects to the Inner City Christian Outreach Residential Program as being pervasively religious and demeaning his faith and moves for reassignment to a secular program

Mr. Hanas complied with the terms of the sentence and took residence in the Inner City Christian Outreach Residential Program. Once there, he discovered that the program, run by a pastor of the Pentecostal faith, was pervasively religious. While in the residential program, Hanas was proselytized to accept the Pentecostal faith and he was not allowed to practice his own Roman Catholic religion. For example, the pastor confiscated Hanas' rosary and Catholic bible because, according to the pastor, they were items of "witchcraft." App. B at App. 32-33. When Hanas asked to see his Catholic priest, the pastor forbade him from doing so. *Id.* The pastor further told Hanas that to be certified as having successfully completed the program, he would need to participate in a Pentecostal service and declare that he had been "saved." *Id.* at App. 34.[4]

---

[4] In support of his motion for reassignment, Hanas provided affidavits from his mother, Chris Hanas, and his aunt, Diane Kropelnitski. They documented that the director of the Inner City Chritian Outreach Residential Program, Pastor Rottier, told Kropelnitski that Hanas "gave up his right to freedom of religion when he was placed in this program." The affidavits recited additional facts that when Hanas unwittingly violated one of the church's rules, he was forced into a three-day word "fast," during which time he was required to remain silent and read the bible continuously. His mother was told that she could not speak to him except when she attended Pentacostal services, and later was informed that she could not attend the services. Hanas was given tests on Pentacostal principles, and copies of these tests were appended to his motion for reassignment. None of these facts contained in the affidavits were disputed at the hearing.

Hanas then returned to the Drug Court and objected to his placement in the Inner City Christian Outreach Residential Program on the grounds that it interfered with his religious freedom. App. B at App. 15-18, 32-35. Hanas filed a Motion for Reassignment asking to be transferred to a secular treatment program. Hanas and his lawyer, along with an attorney for the American Civil Liberties Union participating as *amicus curiae*, objected that the Inner City Christian Outreach Residential Program was a Pentecostal program designed to convert him to the Pentecostal faith, that it demeaned his Roman Catholic religion, and that there were no drug or alcohol counselors on staff. They also objected that Hanas was prohibited from practicing his religion, Catholicism, and from attending Alcoholics Anonymous meetings. *Id.* at App. 32-35.

The Drug Court acknowledged that the Inner City Christian Outreach Residential Program was a "religious based program," but denied Hanas' request for reassignment to a different residential treatment program. App. B. at App. 15-18. The court removed him from the Drug Court program and sentenced him as a regular criminal defendant. *Id.* at App. 20-21. The court sentenced Hanas to six months in jail and to probation for a term of four years. *Id.* at App. 44. Hanas objected, to no avail, that he was being punished by being jailed solely for asserting his rights of religious freedom. *Id.* at App. 42. The only basis for Hanas being removed from the Drug Court program and being placed in jail and on probation was his Motion for Reassignment. In fact, Pastor Rottier, the director of the Inner City Christian Outreach Program, testified on the record that Hanas had "done good" while he was in their program. *Id.* at App. 37.

D. Hanas unsuccessfully petitions for reinstatement into the Drug Court program

After being sentenced to jail, Hanas was moved to a boot camp program after a positive psychological evaluation. Hanas successfully completed boot camp and was released to New Paths, a secular drug treatment program. Hanas then petitioned to be reinstated to the Drug Court program, which would have meant having his conviction set aside and his criminal conviction expunged. App. D at App. 57-58.[5] The court refused this request in a formal order denying reinstatement in the Drug Court program. App. E at App. 61.

E. The Michigan Court of Appeals and the Michigan Supreme Court deny review

Hanas sought review in the Michigan Court of Appeals. In Michigan, when there is a guilty plea, appellate review is only with the leave of the court. Michigan Constitution, Art. I, §20. On May 26, 2004, in a one sentence order, the Michigan Court of Appeals denied leave to appeal "for lack of merits in the grounds presented." App. F at App. 65.

Hanas then sought review in the Michigan Supreme Court. On January 27, 2005, the Michigan Supreme Court, by a 4-3 vote, rejected hearing Hanas' appeal. App. G at App. 66.

---

[5] The court earlier expressly left open the possibility of reinstatement to the Drug Court program when Hanas successfully completed his sentence. App. C at App. 47 ("[I]f Mr. Hanas successfully [completes his sentence] . . . I will reconsider him to return to the Drug Court.")

SUMMARY OF ARGUMENT

Increasingly, across the country, criminal defendants are being placed in drug and alcohol rehabilitation programs that are operated by religious institutions and that are pervasively religious. Most states, like Michigan, have created drug courts where participation in drug rehabilitation programs is often an alternative to incarceration. *See* U.S. General Accounting Office, "Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed To Measure Impact of Drug Court Programs," 27 (GAO-02-434) (2002) (48 states have drug court programs); U.S. General Accounting Office, "Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes," 1 (GAO-05-219) (February 2005) ("Drug court programs have become popular nationwide in the criminal justice system. As of September 2004, there were over 1,200 drug court programs operating in addition to about 500 being planned.")

A core aspect of drug court programs is that defendants are placed in treatment and rehabilitation programs, rather than imprisoned. *See, e.g.*, U.S. Dep't of Justice, Office of Justice Programs, Drug Courts Program Office, "Defining Drug Courts: The Key Components," 7 (1997) ("The mission of drug courts is to stop the abuse of alcohol and other drugs and related criminal activity. Drug courts offer a compelling choice for individuals whose criminal justice involvement stems from AOD [Alcohol and Other Drug] use: participation in treatment. In exchange for successful completion of the treatment program, the court may dismiss the original charge, reduce or set aside a sentence, offer some lesser penalty, or offer a combination of these.")

Because of the federal government's emphasis on allowing faith-based programs to receive government funding, increasingly criminal defendants are being placed in drug and alcohol rehabilitation programs conducted by pervasively religious institutions. For example, in recent years, the federal government has significantly increased the availability of funds for drug and alcohol rehabilitation programs and has expressly authorized faith-based organizations to receive government money to provide these services. *See* White House, Fact Sheet: Providing Help to Heal Americans Struggling with Addiction (2003) ("In his State of the Union Address, President Bush announced a three-year, $600 million federal treatment initiative to help addicted Americans find needed treatment from the most effective programs, including faith-based and community-based organizations.")

Similarly, criminal defendants who have abused alcohol, such as in drunk-driving cases, are increasingly being diverted to treatment and rehabilitation programs, often conduct by religious groups. *See* Michael G. Honeymar, Jr., Note, *Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does it Amount to Establishment of Religion?*, 97 Colum. L. Rev. 437, 437-438 (1997); Rachel F. Calabro, *Comment, Correction through Coercion: Do State Mandated Alcohol and Drug Treatment Programs in Prisons Violate the Establishment Clause?*, 47 DePaul L. Rev. 565 (1998). For example, often the criminal defendant must participate in programs such as Alcoholics Anonymous and Narcotics Anonymous, programs in which faith and God play a central role in treatment. *See, e.g.*, National Center on Addiction and Substance Abuse at Columbia University, So Help Me God: Substance Abuse, Religion and Spirituality 24 (2001) ("Twelve-Step programs

such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) rely on spiritual concepts and methods to support individuals seeking to abstain from substance abuse. . . . The spiritual basis of a 12-Step program is apparent in its tenets which begin with an acknowledgment of God or a higher power.")

This case thus poses issues that are likely to arise with increasing frequency across the country and that are of profound constitutional importance: Does it violate the Free Exercise and Establishment Clauses of the First Amendment for a defendant to face the choice of participating in a pervasively religious program or be imprisoned? Does it violate these constitutional provisions when, as in this case, a defendant is sentenced to jail and probation when he objects that the religious content of the rehabilitation program to which he has been sentenced is inconsistent with and demeans his own faith?

This Court long has held that coercing a person into participating in religious activities violates the core of both the Free Exercise and the Establishment Clauses. *See, e.g.*, *Lee v. Weisman*, 506 U.S. 577, 587 (1992) (coercion violates Establishment Clause); *Employment Division v. Smith*, 494 U.S. 872, 877 (1990) (coercion violates Free Exercise of religion). The decisions of the Michigan courts in this case conflict with this principle in two ways. First, Hanas' First Amendment rights were violated when he was forced to choose between incarceration and participating in a faith-based, pervasively religious treatment program. Second, Hanas' First Amendment rights were violated when his participation in the Drug Court program was permanently revoked, and he was sentenced to six months in jail and four years probation, solely for objecting that the program to which he had been sentenced was

pervasively religious, inconsistent with his Roman Catholic faith, and demeaned his religion.

As described below, there is a conflict among the lower courts as to each of these issues. Some courts have found that it violates the First Amendment for a court to present a criminal defendant with the choice between greater sanctions or participating in a faith-based program. *See, e.g., Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996); *Bausch v. Sumiec*, 139 F.Supp.2d 1029 (E.D. Wis. 2001); *In re Garcia*, 106 Wash. App. 625, 24 P.3d 1091 (2001); *Arnold v. Tennessee Bd. of Paroles*, 956 S.W.2d 478 (Tenn. 1997). Other courts have come to the same conclusion as Michigan's courts did in this case and found no First Amendment violations in similar circumstances. *Ross v. Keelings*, 2 F. Supp.2d 810 (E.D. Va. 1998) (ruling for the defendant on grounds of qualified immunity); *O'Connor v. California*, 855 F. Supp. 303 (C.D. Ca. 1994).

Similarly, some courts have found that it violates the First Amendment to punish a criminal defendant who objects to participating in a pervasively religious, faith-based program. *Warner v. Orange Co. Dep't of Probation*, 115 F.3d 1068 (2d Cir. 1996); *Griffin v. Coughlin*, 673 N.E.2d 98 (N.Y. App. Ct. 1996). But other courts have to come to an opposite conclusion and ruled as the Michigan courts did in this case that it does not violate the First Amendment for a court to impose greater punishments on a defendant who refuses to participate in a faith-based program. *Boyd v. Caughlin*, 914 F.Supp. 828 (N.D.N.Y. 1996); *Feasel v. Willis*, 904 F. Supp. 582 (N.D. Tex. 1995).

This Court should grant certiorari to resolve this split among the lower courts and to decide a question of increasing national importance, as more jurisdictions are

adopting Drug Court programs where treatment is the alternative to prison and with growing frequency these programs are conducted by faith-based organizations.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT AMONG THE LOWER COURTS AND TO DECIDE A QUESTION OF NATIONAL IMPORTANCE AS TO WHETHER IT VIOLATES THE FREE EXERCISE OR ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT FOR A CRIMINAL DEFENDANT TO FACE A COERCIVE CHOICE BETWEEN IMPRISONMENT OR PARTICIPATING IN A PERVASIVELY RELIGIOUS REHABILITATION PROGRAM RUN BY A FAITH-BASED ORGANIZATION THAT IS INCONSISTENT WITH THE DEFENDANT'S OWN RELIGIOUS BELIEFS

This Court long has held that, above all, free exercise of religion under the First Amendment is protection from government coercion and indoctrination. As this Court explained:

> The Free Exercise Clause means first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all government regulation of religious beliefs as such. The government may not compel affirmation of religious belief, punish the expression of religious doctrine it believes to be false, impose special disabilities on the basis for religious views or religious status, or lend its power to one side or the other

> side in controversies over religious authority or dogma.

Employment Division v. Smith, 494 U.S. at 877 (citations omitted).

Similarly, this Court has declared that government coercion violates the Establishment Clause of the First Amendment. As the Court explained in *Lee v. Weisman*, 506 U.S. at 587: "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which establishes a religion or religious faith, or tends to do so." Indeed, while there long has been disagreement among Justices as to the appropriate test for the Establishment Clause, all have agreed that government coercion violates the First Amendment. *See, e.g., Lee v. Weisman*, 505 U.S. at 640-642 (Scalia, J., dissenting) (coercion "by force of law or threat of penalty" violates the Establishment Clause.)

This Court should grant review in this case to decide a question of national importance: whether a court violates these principles of the Free Exercise and Establishment Clauses in forcing a criminal defendant to choose between incarceration or participating in a pervasively religious, faith-based drug or alcohol rehabilitation program. The decisions of the Michigan courts in this case directly pose this issue. Joseph Hanas' only choice was either to participate in the Inner City Christian Residential Program, run by the Pentecostal faith, or to be imprisoned. This Court should grant review to resolve the conflict between the Michigan courts' decisions and the long-standing principles of this Court that such government coercion violates both the free exercise and the establishment clauses.

Moreover, review by this Court is necessary to resolve a conflict among the lower courts as to whether it violates the Free Exercise and Establishment Clauses to force a criminal defendant to choose between imprisonment or participating in a pervasively religious rehabilitation program run by a faith-based organization. Some lower courts have come to exactly the opposite conclusion of the Michigan courts in this case. For example, *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996), is in direct conflict with the Michigan courts' decisions here. In *Kerr*, the Seventh Circuit considered whether James Kerr could be required to attend Narcotics Anonymous (NA) meetings as a condition of his rehabilitation. The court found that if Kerr did not participate in the NA program he would have been subjected to significant penalties, including classification as a higher security risk and adverse notation in his record that could diminish his chances of parole. 95 F.3d at 479. The court also held that the religious component of NA was not incidental, and that enforcing his participation in the program "runs afoul of the prohibition of the state's favoring religion in general over non-religion." *Id.* at 480. As in this case, the prisoner had no alternative to the pervasively religious NA program. *Id.* at 474. Unlike the Michigan courts in this case, the Seventh Circuit ruled that forcing a person to choose between participating in a religious program or facing greater criminal sanctions violated the First Amendment.

Bausch v. Sumiec, 139 F.Supp.2d 1029 (E.D. Wis. 2001), is a case with very similar facts to this case, but the court came to the opposite conclusion of the Michigan courts. As an alternative to parole revocation, Bausch was told he could enter the Exodus House residential substance abuse treatment program, a program based on AA

and NA with a significant religious component. Although Bausch is an atheist, he did not complain about the placement and agreed to it. Nonetheless, the federal district court found that even though Bausch did not object, there was impermissible coercion in violation of the First Amendment because Exodus House was presented as the only option (other than parole revocation).

Several other federal and state courts have come to similar conclusions which conflict with the Michigan courts' decision in this case. *See, In re Garcia* 106 Wash. App. 625, 630, 24 P.3d 1091 (2001) (requiring inmates' attendance at AA classes as part of chemical dependency treatment violates the establishment clause); *Arnold v. Tennessee Bd. of Paroles*, 956 S.W.2d 478, 484 (Tenn. 1997) (where treatment program is religious and the only program available, forced participation and consideration of attendance or nonattendance in parole decisions violates Establishment Clause).

But the Michigan courts are not alone in holding that the First Amendment is not violated when a criminal defendant is forced to choose between greater criminal sanctions or participating in a faith-based program. For example, in *O'Connor v. California*, 855 F. Supp. 303, 304 (C.D. Ca. 1994), the court held that "requiring a person convicted of drunk driving to attend a self-help program, where the principal program available is Alcoholics Anonymous, does not violate the Establishment Clause of the First Amendment to the United States." Although the court recognized that God and spirituality are at the center of AA, it found no violation of the Establishment Clause, even though AA was the principal alternative to the defendant facing incarceration. *See also Ross v. Keelings*, 2 F. Supp.2d 810 (E.D. Va. 1998) (granting a

defendant qualified immunity when sued for forcing a prisoner to participate in a faith-based program "because a reasonable prison official would not have known that coerced participation in a prison rehabilitation program that teaches spirituality violates an inmate's Establishment Clause rights.")

As the government is increasingly subsidizing faith-based drug and alcohol rehabilitation programs, this issue will arise with ever greater frequency as to whether courts violate the Free Exercise and Establishment Clauses by forcing a criminal defendant to choose between participating in a pervasively religious program or face greater criminal sanctions. This Court should grant review to resolve the conflict among the lower courts and decide this issue of national importance.

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT AMONG THE LOWER COURTS AND TO DECIDE A QUESTION OF NATIONAL IMPORTANCE AS TO WHETHER IT VIOLATES THE FREE EXERCISE OR ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT FOR A COURT TO SENTENCE A CRIMINAL DEFENDANT TO JAIL AND PROBATION, AND DENY HIM REINSTATEMENT IN A DRUG COURT PROGRAM, FOR OBJECTING TO PARTICIPATING IN A PERVASIVELY RELIGIOUS REHABILITATION PROGRAM RUN BY A FAITH-BASED ORGANIZATION THAT IS INCONSISTENT WITH THE DEFENDANT'S OWN RELIGIOUS BELIEFS

This case poses a second, distinct constitutional issue: Were Hanas' First Amendment rights, under the Free

Exercise and Establishment Clause, violated when the Michigan Drug Court sentenced him to six months in jail and four years of probation when he objected to the Inner City Christian Outreach Residential Program and presented a motion for reassignment? Hanas' participation in the Drug Court program was terminated solely because he went to the Drug Court and objected that the Inner City Christian Outreach Residential Program, operated by a Pentecostal church, was inconsistent with and demeaned his religion. *See* Appendix B at App. 14-22, 32-44. Even after Hanas did his jail time by participating in a boot camp program, the Drug Court still would not reinstate him. *See* Appendix D at App. 61; Appendix E at App. 63. Reinstatement would have meant an expungement of his criminal conviction.

In the Drug Court proceeding, Hanas sought reassignment based on his First Amendment rights to religious freedom. In fact, a lawyer for the American Civil Liberties Union participated in the hearing as an *amicus curiae* to request Hanas' transfer on First Amendment grounds and to object to Hanas being sentenced to jail just for asserting his First Amendment rights. *See* Appendix B at App. 26.

This Court should grant review to resolve the conflict between the Michigan Drug Court's decision and the rulings of this Court that such coercion violates both the Free Exercise Clause and the Establishment Clause. *See, e.g., Lee v. Weisman*, 506 U.S. at 587 (coercion violates Establishment Clause); *Employment Division v. Smith*, 494 U.S. at 877 (coercion violates Free Exercise of religion).

Moreover, lower courts have come to conflicting conclusions as to whether it violates the First Amendment's

religion clauses to expel a person from a treatment program and to impose criminal sanctions when the individual objects that the treatment program is pervasively religious. Some courts have come to exactly the opposite conclusion of the Michigan Drug Court and have found a violation of the First Amendment in the circumstances presented by this case. For example, in *Warner v. Orange Co. Dep't of Probation*, 115 F.3d 1068 (2d Cir. 1996), the court, on a recommendation of the Orange County Department of Probation, sentenced Warner to attend Alcoholics Anonymous meetings after he pled guilty to drunk driving. Warner was an atheist and complained to his probation officer about attending the meetings, but he continued attending. The probation officer interpreted this as showing that Warner "lacked sufficient commitment to the program" and told Warner to increase his participation or face revocation of probation and incarceration. That, of course, is the choice that Hanas faced in this case. The Second Circuit, unlike the Michigan Drug Court, found that presenting the defendant with this choice violated the First Amendment. The Second Circuit concluded that the Alcoholics Anonymous program had a "substantial religious component," *id.* at 1070, and concluded that "[t]here can be no doubt . . . that Warner was coerced into participating in these religious exercises by virtue of his probation sentence." *Id.* at 1075.

Other courts have come to this same conclusion, which is at odds with the decision of the Michigan courts in this case. In *Griffin v. Coughlin,* 88 N.Y.2d 674, 673 N.E.2d 98 (N.Y. Ct. App. 1996), the court found that it violated the First Amendment to deprive an inmate of benefits for refusing to participate in a faith-based, Alcoholics Anonymous program. The court declared: "On this appeal we

hold that, under the Establishment Clause of the United States Constitution's First Amendment, an atheist or agnostic inmate may not be deprived of eligibility for expanded family visitation privileges for refusing to participate in the sole alcohol and drug addiction program at his State correctional facility when the program necessarily entails mandatory attendance at and participation in a curriculum which adopts in major part the religious-oriented practices and precepts of Alcoholics Anonymous." 88 N.Y.2d at 677. *See also Scarpino v. Grossheim*, 852 F.Supp. 798 (S.D. Ia. 1994) (finding a violation of the Establishment Clause where non-participation in a prison substance abuse recovery program, which made frequent mention of God, resulted in a longer prison term).

But other courts have come to the same conclusion as the Michigan courts in this case and found that it does not violate the First Amendment for a court to incarcerate an individual who refuses to participate in a faith-based, pervasively religious treatment program. For instance, in *Boyd v. Coughlin*, 914 F.Supp. 828 (N.D.N.Y. 1996), a prisoner was removed from "Family Reunion Program" because of his failure to participate in sectarian alcohol and substance abuse treatment program. The court found that there was no violation of the Establishment Clause because the government had a secular purpose, treatment of the prisoner's substance abuse problem, in requiring him to either participate in the faith-based program or face additional sanctions. Other courts have come to this conclusion as well. *See, e.g., Feasel v. Willis*, 904 F. Supp. 582 (N.D. Tex. 1995), (finding no constitutional violation when the Lubbock County Community Correctional Center required Robert Feasel to attend Alcoholics Anonymous meetings or face greater sanctions).

Thus, this Court should grant review to resolve a conflict among the lower courts and decide a question that will arise with increasing frequency as drug courts are becoming more prevalent and as the government is providing ever greater assistance to faith-based drug and alcohol rehabilitation programs: Did it violate Hanas' First Amendment rights for the Michigan Court permanently to remove him from the Drug Court program and sentence him to jail and probation simply for objecting to the pervasively religious program to which he had been assigned and requesting a transfer to a secular program?

CONCLUSION

For the above reasons, Petitioner Joseph Hanas respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

ERWIN CHEMERINSKY
Counsel of record
DUKE UNIVERSITY SCHOOL OF LAW
Science Drive and Towerview Road
Durham, North Carolina 27708
(919) 613-7173

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street
New York, New York 10025
(212) 549-2500

MICHAEL J. STEINBERG
KARY L. MOSS
GREGORY T. GIBBS
GLENN M. SIMMINGTON
AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN
60 West Hancock Street
Detroit, Michigan 48201
(313) 578-6814

Attorneys for Petitioner Joseph Hanas

APPENDIXES TO CERT. PETITION

Page

Appendix A – Transcript of the hearing of January 24, 2003.....App. 1

Appendix B – Transcripts of the hearings of February 27, 2003, and March 13, 2003.....App. 13

Appendix C – The order of the Michigan Circuit Court (County of Genesee), March 13, 2003.....App. 49

Appendix D – Transcript of the hearing of January 22, 2004.....App. 53

Appendix E – The order of the Michigan Circuit Court (County of Genesee), February 10, 2004 ....App. 63

Appendix F – The order of the Michigan Court of Appeals declining leave to appeal for "for lack of merits in the grounds presented".....App. 65

Appendix G – The order of the Michigan Supreme Court, denying review by a 4-3 vote .....App. 66

APPENDIX A

STATE OF MICHIGAN
IN THE 7TH CIRCUIT COURT (COUNTY OF GENESEE)

PEOPLE OF THE
STATE OF MICHIGAN,

vs

JOSEPH RAYMOND HANAS,

Defendant.
_____/

CIRCUIT COURT NO.
02-9621-FH

VIDEOTAPED

MOTION HEARING

BEFORE THE HONORABLE ROBERT M. RANSOM,
CIRCUIT JUDGE

FLINT, MICHIGAN – FRIDAY, JANUARY 24, 2003

APPEARANCES:

For the Plaintiff: TAMARA J. PHILLIPS P56505
Assistant Prosecuting Attorney
900 South Saginaw Street
Flint, Michigan 48502

For the Defendant: JOHN L. YIANNATJI P26757
Attorney for Defendant
310 E. Court Street
Flint, Michigan 48502
(810) 233-0785

Recorded by: Via Video Recorder

Transcribed by: Jan Fagerman CER 7125
Certified Electronic Recorder
(810) 424-4454

[2] TABLE OF CONTENTS

WITNESSES: PEOPLE PAGE

None

WITNESSES: DEFENDANT

None

[3] Flint, Michigan

Thursday, January 23, 2003 – 11:49 a.m.
(All parties present)

THE COURT: People verses Joseph Hanas. Mr. Hanas' case is 02-9621-FH.

THE DEFENDANT: Hi, Your Honor.

THE COURT: Hello, Mr. Hanas.

Ms. Amy, I left off here yesterday with Mr. Hanas telling me that he had a – an arrest for minor in possession.

MS. AMY: That's correct.

THE COURT: Mr. Hanas?

THE DEFENDANT: Yes, sir.

THE COURT: What's the status of that case?

THE DEFENDANT: On the 3rd I have to go to Court with – to see Judge Odette.

THE COURT: Did you go to the alumni group last night?

THE DEFENDANT: Yes, sir. I (inaudible) that meeting for the first time I went there. It was a good meeting. I go to every – I go to a meeting every day.

THE COURT: Did you talk to them about your new charge?

THE DEFENDANT: Yeah. I talked with Reggie [4] about it a lot, and I've talked to everyone in there, and they just said hang in there, and just keep doing what you've got to do.

MS. AMY: Mr. Hanas reported to me the following morning after this MIP arrest, and I asked him to attend daily programming with Drug Court, and he has brought back verification that he has attended all programming, including cognitive behavior, and he brought his bulletin from attendance at church.

THE COURT: Which reminds me, I didn't mention cognitive behavior to Mr. Payne, but –

MS. AMY: Okay. Sure.

THE COURT: – when you meet with him –

MS. AMY: Sure.

THE COURT: – give him a referral.

Ms. Amy, I think what we should do in light of his Court date of February 3rd, I think we should – well, there's another – another loose end here. What happened to the Salvation Army program?

THE DEFENDANT: I had gotten three write-ups in the Salvation Army, and they put me out on the street, and that's when I came back here. It just didn't work out for me. I wanted – I was – I was like so mad when I got kicked out. I didn't want it to be like that at all.

[5] THE COURT: You were mad?

THE DEFENDANT: I was like sad. I did not want to leave it. At first when I first got there I didn't like the program, but then I like – like – started liking it and

MS. AMY: This is in Grand Rapids.

THE DEFENDANT: Yeah, that was in Grand Rapids. Your Honor, I –

THE COURT: Amy, what's the – do you have any sense of what the prospect would be for him to attend the Salvation Army here?

MS. AMY: He was in the Salvation Army here, Your Honor, and that didn't work out either.

Is that right?

THE DEFENDANT: No, sir. I – Joann Reed (phonetic), the counselor there, like the head of administration, she lives right by me, and we're real cool together and everything, and she just – she don't think the Salvation Army would be – I don't know, it's just not for me.

THE COURT: Not for you?

THE DEFENDANT: Maybe. I don't know.

THE COURT: You like – you like the prospect of prison better?

THE DEFENDANT: No, sir. But I tried at the [6] Grand Rapids and they –

THE COURT: What do you think – what do you think is going to happen when you quit these programs?

THE DEFENDANT: I don't know. I'd like to just keep going to meetings and get a –

THE COURT: Well, Mr. Hanas, sort it out here. If you start and quit one program after another, there's going to come a point when there's going to be some consequence. Does that makes sense?

THE DEFENDANT: Yes, sir.

THE COURT: You're – you're headed for prison is what's – is what's going on.

I – I can tell you the same thing I told Mr. Payne, we've got people lined up here to get into this program that want to follow the rules. I've got people that go over to the Salvation Army and don't get write-ups, and stay with the program. So, you're – you're getting dangerously close to getting washed out here.

THE DEFENDANT: At the New Paths I spoke to that Mr. Hopkins, and maybe I can get into the day treatment. I can stop by there every day and I could still attend all of the meetings and get my GED, and everything. Don't – I was even think about going back to Mott Middle College for just – full time.

[7] THE COURT: You know, Mr. Hanas, all of these programs are good programs, and that's all wonderful, but you've got to complete them. You don't start something that you don't finish.

Ms. Amy, what is your recommendation?

MS. AMY: I feel that – that Joe would benefit by a residential placement, and I know he would prefer staying at home and being able to attend daily program. I think he would be better served in a residential placement. He's not eligible for New Paths. I've tried everything. But he would be eligible for Pastor Rottiers'

program, which is a one year residential program, and there is one bed available as of this morning.

THE COURT: Is there a fee for that?

MR. YIANNATJI: I don't believe so. I asked him about it, and he didn't respond about a fee. He responded about the program. So, to the best of my knowledge there is not. They provide – they provide rehabilitative training for jobs – higher level jobs apparently than New Paths provides training for.

THE COURT: I've heard two things here, Ms. Amy, that have some potential. Frankly, I hadn't thought about Pastor Rottiers' program, but that's an excellent suggestion. Another alternative would be [8] putting him in the New Paths day reporting program. Between the two programs, what would your choice be?

MS. AMY: (Speaking to defendant) I know you like day reporting.

Because there's – there's really a home situation of enabling here, I think he would be better being around men, being around a group of men, and learning how to be a man.

THE DEFENDANT: (Inaudible).

THE COURT: So, where does he go for that?

MS. AMY: Pastor Rottiers' program could provide that. They have 22 people in that program right now.

THE COURT: Do you want him in custody to go there, or do you want him to report on his own?

MS. AMY: Can you report on your own?

THE DEFENDANT: Yes, Your Honor.

MR. YIANNATJI: I – I believe he will.

THE COURT: Do you have been the name of Pastor Rottiers' program?

MR. YIANNATJI: Inner city Christian Outreach.

THE COURT: Are you going to Mr. Hetherington's attendance group today?

THE DEFENDANT: Yes, sir.

[9] THE COURT: Where should he report, Ms. Amy?

MS. AMY: Report back to Court, Your Honor?

THE COURT: No. Report to Pastor Rottiers.

MS. AMY: Let's say no later than tomorrow morning, and I'll verify with Pastor Rottiers exactly what time he wants him over there.

THE COURT: Ms. Amy, I'm going to give him a jail program order that provides that he is to go Mr. Hetherington's group today, and he's to report to Pastor Rottiers' program tomorrow. Ms. Amy, I put a copy in here for you.

MS. AMY: Thank you.

THE COURT: Mr. Hanas, you've got to complete. This where you're at, you're at the end of the line. You either finish – you either complete the program, or chances are you're going to prison. So, it's a question now.

THE DEFENDANT: All right. I got no choice then but to complete the program.

THE COURT: Well, I know that you say that when you're standing here, but when you're – when you're there in the program just remember you've got to follow the rules.

THE DEFENDANT: Yep. Is there a –

THE COURT: Were – were you here for Mr. [10] Coleman's talk yesterday?

THE DEFENDANT: Yes, sir. Hitting the bases.

THE COURT: Hitting the bases. He's talking about maturity. He's talking about acting responsibly. Mature adults follow rules.

THE DEFENDANT: Or pay for consequences.

THE COURT: You've got some growing up to do. You're not following the rules. You didn't follow the rules in the Salvation Army here. You didn't follow the rules in the Salvation Army in Grand Rapids. That's – what goes on there is what goes on in life. If you can't follow the rules, it's a difficult road, because then you end up doing stuff like this, and you lose – and you start losing the ability to make choices for yourself. You've lost the opportunity to choose to stay at home.

So, if you want to get back in control, if you want to be able to make those choices for yourself, you have to act responsibly. We all have to live by rules, and the sooner that you catch on to that concept, the more fun this journey is going to be, because I don't imagine that it's fun coming in here and having to listen to this, and I don't

imagine it's fun. There's a lot of anxiety not knowing what's [11] going to happen when you go to Judge Odette's Court, not knowing whether you're going to go to prison because you got a new charge. All of that creates a lot of stress in your life. Follow the rules, that anxiety goes away.

THE DEFENDANT: So, this is like a year program, and I was wondering after this year, this program, if I successfully complete it, will I still be in Drug Court?

THE COURT: You are going to be in Drug Court in the program. Pastor Rottiers will bring you here for Thursdays.

THE DEFENDANT: Okay. Then what?

THE COURT: You will – you will continue in the Drug Court program in this residential treatment program. You successfully complete it, you will be successfully completing the Drug court.

THE DEFENDANT: Really? Okay. I'll contact him today, and go to the meeting, and then I'll stop by and see him after the meeting, or before I go. It don't matter?

MS. AMY: Ask him.

THE COURT: I don't – I don't want to be redundant. I don't want to keep repeating myself, but I want to make a point with you. I want you to know [12] exactly where you're at when you walk out of here. You go to Pastor Rottiers' program, you follow the rules, you successfully complete it, you'll complete his program, you'll end up at the same time completing the Drug Court program, you'll graduate, you'll – you'll be clean, you'll be out of

trouble, you'll rid all of the anxiety that you have with the criminal justice system. That's the prospect if you follow the rules.

If you don't follow the rules, the prospect is you're going to come back here and you're going to go to prison. So, that's as simple as I can put it. That's where you're at.

THE DEFENDANT: Okay, Your Honor.

THE COURT: So, it's going to be up to you what you do with this.

Ms. Amy, when – we should give him a Drug Court date so that Pastor Rottiers knows that as well. Give him about four weeks.

MS. AMY: Yeah. What's the date after the 27th of February? I can't think that far.

THE COURT: March 6th

MS. AMY: March 6th. Okay. Thank you, Your Honor.

THE COURT: Put him on for March 6th.

[13] MS. AMY: And remember, the rules of Pastor Rottiers' program are the rules of the Court. It's just the same. You screw up that, you screw up this.

THE DEFENDANT: Yeah.

THE COURT: We – we made a deal with Pastor Rottiers. He's a partner in the Drug Court. Do you want to write that date on Mr. Hanas' copy – that – that March 6th date, 2:00?

That's all. Thank you.

MS. AMY: Thank you, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: Mr. Hanas?

THE DEFENDANT: Yes, sir.

THE COURT: It's probably hard – you probably have a hard time comprehending this, but whether you believe it or not, I'm on your side.

THE DEFENDANT: I know. That's a good thing.

THE COURT: I want you to get through this. I don't want you to wash out of this. I'll make the tough calls if I've got to make them, but I'm telling you that that's not what I want to do. I would a whole lot rather have you here graduating, and everybody applauding you, that's – that would be my choice.

[14] So, let's commit to doing what you've got to do, and follow through.

THE DEFENDANT: Okay. I will do it. I will be back to tell you how everything is going.

THE COURT: I'm – I'm not sure to what extent Pastor Rottiers can coordinate the programming, but acupuncture might be something that we might ask him to afford Mr. Hanas.

MS. AMY: I talked to him about working the Drug Court programming in, and he's amenable to that. And he also is going to be, Your Honor, bringing some of his people to Court every now and then. He wants to get back into doing that, so, he was actually glad to receive the call this morning.

THE COURT: That was a very good suggestion. Excellent idea.

MS. AMY: Thank you.

THE COURT: Mr. Hanas probably doesn't agree with you, but. It's a great feeling when you successfully complete.

THE DEFENDANT: Yeah.

THE COURT: When you get all of the way through, you will agree, but you've got to get there. That's all.

Thank you.

[15] THE DEFENDANT: Thank you.

(At 12:10 p.m., proceedings concluded) Tape No. 01/24/03 12:10 p.m.

[16] STATE OF MICHIGAN)

COUNTY OF GENESEE)

I, Jan Fagerman, do hereby certify that this transcript, consisting of 16 pages, is a complete, true and correct transcript to the best of my ability of the videotaped proceedings taken in this case on Friday, January 24, 2003, before the Honorable Robert M. Ransom, Circuit Judge.

July 14, 2004

/s/ Jan M. Fagerman
JAN FAGERMAN CER 7125
107 Courthouse
Flint, Michigan 48502
(810) 424-4454

APPENDIX B

STATE OF MICHIGAN

IN THE 7TH CIRCUIT COURT
(COUNTY OF GENESEE)

PEOPLE OF THE STATE OF MICHIGAN,	CIRCUIT COURT NO. 02-9621-FH
vs	VIDEOTAPED
JOSEPH RAYMOND HANAS, Defendant. /	

MOTION HEARING

BEFORE THE HONORABLE
ROBERT M. RANSOM, CIRCUIT JUDGE
FLINT, MICHIGAN – THURSDAY, FEBRUARY 27, 200[3]

APPEARANCES:

For the Plaintiff:	TAMARA J. PHILLIPS P56505 Assistant Prosecuting Attorney 900 South Saginaw Street Flint, Michigan 48502
For the Defendant:	JOHN L. YIANNATJI P26757 Attorney for Defendant 310 E. Court Street Flint, Michigan 48502 (810) 233-0785
Recorded by:	Via Video Recorder
Transcribed by:	Jan Fagerman CER 7125 Certified Electronic Recorder (810) 424-4454

[2] TABLE OF CONTENTS

PAGE

WITNESSES: PEOPLE

None

WITNESSES: DEFENDANT

None

[3] Flint, Michigan

Thursday, February 27, 2003-4:26 p.m. (All parties present)

THE COURT: The case of the People of the State of Michigan verses Joseph Raymond Hanas, 02-9621-FH.

Mr. Yiannatji presented an argument yesterday on Mr. Hanas' behalf, and I listened, I took it under advisement, I asked Mr. Yiannatji to return here today.

Mr. Yiannatji, I have taken up your – your objections, your comments with regards to Mr. Hanas and the Inner City –

MR. YIANNATJI: Christian Outreach –

THE COURT: – Christian –

MR. YIANNATJI: Outreach Center.

THE COURT: – program, and I'm going to – I'm going to summarize my conclusion, and I'm going to give you an option for Mr. Hanas, and then you can talk to him, come back and let us know what he wants to do.

MR. YIANNATJI: Well, that's part of the problem, they won't let me talk to him.

THE COURT: Well, then you could let me know.

[4] MR. YIANNATJI: Okay.

THE COURT: Here's where we're at, first of all, there was an objection that Mr. Hanas was not getting treatment in the Inner City program, that it was not a treatment program, and it was not certified and licensed as a treatment program.

MR. YIANNATJI: I think that's what the allegation I made was. Ms. Amy is the one that told me they didn't have any counselors, and it wasn't really a rehabilitation center. It was more of a home shelter.

THE COURT: Well, I'm not sure it's accurate that they don't have any counselors, is it Ms. Amy?

MS. AMY: No, Your Honor. It is a residential program. It's not a treatment program, but there are counselors.

THE COURT: Inner City is a residential program. It is not a drug treatment program. It is a residential program. It is a faith based residential program.

MR. YIANNATJI: But that's one of the objections.

THE COURT: Mr. Yiannatji, I'm not here to be in a debate. I'm n [sic] going to tell you what the circumstances are, and then I'm going to get to the [5] bottom line.

MR. YIANNATJI: Okay.

THE COURT: It is a faith based residential program. Mr. Hanas went there as a resident. His treatment

wasn't expected to come from there. His treatment was expected to come from a program that he would attend outside of there. He would be in a – Ms. Amy, what was the – what was the treatment program that he was to attend?

MS. AMY: What we'll need to do is have him IRACed, and recommended for a treatment program.

THE COURT: Well, in any event, the point is he didn't go there with the intention of getting drug treatment. He went there because he needed, in our opinion, a long term residential placement, and from there he would involve into an intensive outpatient treatment program.

He was told from the beginning that this was a religious based program, and he went to that program at his request. We told him that here in the courtroom. We advised him what he was getting into, and he choose to go to that program.

The – the conditions of this residence and the – the no contact that he is experiencing there is very much analogous to what they do in the Salvation [6] Army program. And, incidentally, I understand he's been at the Salvation Army program and washed out of it two times previously.

MR. YIANNATJI: Yeah, I don't disagree with that.

THE COURT: Mr. Hanas was at the point where he was going to – he was going to wash out of this program, or he was given an option of a long term residential placement. He choose that, and the reason that he – that that particular program –

MR. YIANNATJI: What were his options?

THE COURT: – had appealed to him –

MR. YIANNATJI: It was either that or prison, I assume?

THE COURT: – this – Mr. Yiannatji, we're missing the target here. This is not a dialogue. This is going to be – I'm telling you something.

MR. YIANNATJI: Okay.

THE COURT: The only way it's possible to learn is to listen.

MR. YIANNATJI: Yes, sir.

THE COURT: The reason that he chose this particular program had to do with economics as well. He could get into this program without any money. There were other options, but he didn't have any [7] money. He couldn't pay – he couldn't pay the fee. One of the programs is a $300 fee. He couldn't come up with $300. So, he opted for this program, and I'm confident when he made the choice he knew what he was getting into.

Now, he hadn't lived it, but it was defined for him. It was defined for him and he chose it.

Now. I'll give you the fact that he probably didn't want to go to jail, he probably was looking for what was a lesser of two evils, and – and he jumped on it, and, you know, now that he's in it, apparently, he doesn't like it. But my point is that it was defined for him and he made the choice.

Now, I heard you say yesterday that the Salvation Army was a potential, there was a bed.

MR. YIANNATJI: I have an affidavit from the director of the Salvation Army.

THE COURT: He's absconded twice from that program.

MR. YIANNATJI: She – okay.

THE COURT: There's only – there's only so many times that I'm going – you know, I'm not going to keep sending somebody back that keeps failing at the program. It seems to me that two times at the Salvation Army is enough.

[8] I would say at this point that if Mr. Hanas – if he wants to follow through with what he committed to do, then he can stay at the program that he's at. I've been assured that there is not a conflict with his – his Roman Catholic faith and the Pentecostal program, but that's a choice. He can stay there. If it's not acceptable to him, then he can check into the jail, and we will put his case back on the docket, and we'll bring him up and we'll review it based on where he's at right now, and we'll make a decision as to what the disposition will be. And I can tell you, I don't know what I would do, and there may be other options. I'm not foreclosing other options. If you can come up with other options, I would entertain other options. But at this point, having failed twice at the Salvation Army, I'm – I'm not willing to send him back there a third time.

I can tell you that I do remember that when Mr. Hanas went out of here, he was right at the end of the rope.

MR. YIANNATJI: I recognize that. I recognize that.

Your Honor, would you consider giving me an order allowing his parish priest to send a deacon to give him confession and Holy Communion? And you told [9] me you would take care of it, if they wouldn't let me talk to him.

THE COURT: Ms. Amy, do you want to (inaudible) that and –

MS. AMY: Yes. Pastor Rottiers said that they were – they would not have the other faiths coming in and each doing their own thing while he's at the church.

THE COURT: When he's – when he's eligible to get out? I mean, to –

MS. AMY: It's a year long program designed to –

THE COURT: No. I don't mean complete it. I mean –

MS. AMY: – (inaudible) restrictions in 90 days.

MR. YIANNATJI: And that's another thing that bothers me, Judge, he's put on restrictions –

THE COURT: When is he free to go to church where he wants to go?

MS. AMY: I would think in 90 days. He's not required to participate in that church.

MR. YIANNATJI: Judge –

THE COURT: Okay.

Would you ask Pastor Rottiers if – if it's [10] acceptable for him to participate in his – the religion of his choice and the services while he's in the restriction.

MR. YIANNATJI: Judge, he's – my information is that he was placed on restrictions because he talked to me in private.

THE COURT: Well –

MR. YIANNATJI: That seems rather –

MS. AMY: He violated a program rule.

MR. YIANNATJI: Well, which –

UNIDENTIFIED VOICE: (Inaudible) program under restrictions, you're in violation. It doesn't make a difference who he is.

MR. YIANNATJI: Well, that's – that's unconstitutional, Judge.

MS. AMY: (Inaudible).

THE COURT: I'll tell you what we're going to do, Mr. Yiannatji, we're going to put Mr. Hanas back in the jail, we're going to set him on for a sentence date, we're going to bring him back here –

MR. YIANNATJI: Are you doing that because of me, Judge?

THE COURT: – we're going to review him. You have told made the program is not acceptable to Mr. Hanas.

[11] MR. YIANNATJI: No. I'm not saying it's unacceptable. I'm saying it's a violation of the 6TH Amendment for this gentleman not to have an opportunity to talk to counsel.

THE COURT: Mr. Yiannatji, you sat here yesterday and you told me this program was not acceptable, it was –

MR. YIANNATJI: Those weren't my words.

THE COURT: – it was in violation of his constitutional rights.

MR. YIANNATJI: I did say that.

THE COURT: He's going back to the jail. We're going to reassess him. He can be out of the program.

MR. YIANNATJI: Judge, why – why punish this man because of me?

THE COURT: This isn't punishment. You didn't like the program. We're going to get him out of it.

MR. YIANNATJI: No. What I said was I wanted to have access to my client so I could properly counsel with him, and I wanted him to be able to participate in his own religion. I mean, they took his rosary beads away, and said they were articles of witchcraft, Judge.

[12] THE COURT: He's a participant –

MR. YIANNATJI: I don't want you to punish this kid because of me.

THE COURT: We're going to put Mr. Hanas – put him on for sentence two weeks from now.

MS. MELTON: Yes, Your Honor.

THE COURT: And –

MR. YIANNATJI: I think you're punishing him because of me, Judge.

THE COURT: – get a report from Pastor Rottiers with regard to his progress in the program, and we'll reassess what's going to happen with Mr. Hanas in two weeks, and we'll get an updated report –

MS. MELTON: (Inaudible).

MR. YIANNATJI: Judge, I'm just going to take one – 30 seconds of your time. I have also filed a motion that's scheduled for Monday. I'll show up Monday, and maybe you can hear it.

THE CLERK: All rise.

THE COURT: I have to leave. The Court is in recess.

(At 4:38 p.m., proceedings concluded) Tape No. 02/27/03 4:38 p.m.

[13] STATE OF MICHIGAN)

COUNTY OF GENESEE)

I, Jan Fagerman, do hereby certify that this transcript, consisting of 13 pages, is a complete, true and correct transcript to the best of my ability of the videotaped proceedings taken in this case on Thursday, February 27, 2003, before the Honorable Robert M. Ransom, Circuit Judge.

July 12, 2004

/s/ Jan M. Fagerman
JAN FAGERMAN CER 7125
107 Courthouse
Flint, Michigan 48502
(810) 424-4454

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR
THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN

PLAINTIFF,

V No. 02-9621-FH

JOSEPH RAY HANAS,

DEFENDANT.

_____/

JUDGMENT OF SENTENCE
BEFORE THE HONORABLE
ROBERT M. RANSOM, CIRCUIT JUDGE
Flint, Michigan – Thursday, March 13, 2003

(Filed Mar. 28, 2003)

APPEARANCES:

For the Defendant:

JOHN L. YIANNATJI (P26757)
ATTORNEY FOR DEFENDANT
310 East Court Street
Flint, Michigan 48502
(810) 233-0785

GREGORY T. GIBBS (P26440)
ATTORNEY FOR DEFENDANT
328 S. Saginaw St., Ste. 9001
Flint, Michigan 48502
(810) 239-9470

Also Present: Daniel Bard, Probation Dept.

TRANSCRIBED BY: Teresa A. Trosko, CER 5595

[2] TABLE OF CONTENTS

PAGE

WITNESSES: None

EXHIBITS: None

[3] Flint, Michigan

Thursday, March 13, 2003 – 4:36 p.m.

THE COURT: People of the State of Michigan versus Joseph Raymond Hanas. Mr. Hanas's case is case number 02-9621-FH.

Mr. Hanas is represented by Gary Lengyel, who –

MR. YIANNATJI: Actually I'm his attorney, Judge, John Yiannatji.

THE COURT: Mr. Yiannatji, I inquired of Mr. Hanas here this afternoon. I asked him –

(Cell phone rings in the background.)

MR. YIANNATJI: Without me being present?

THE COURT: Normally we ask people with cell phones to leave the Courtroom. But I'm going to make an exception here.

I asked Mr. Hanas who he wanted to represent him. And Mr. Hanas told me Mr. Lengyel. And so, consequently –

MR. YIANNATJI: Well, let me ask, if I may, Judge.

Sorry to interrupt you.

THE COURT: Did you understand what I was saying?

MR. YIANNATJI: Yeah, you asked him. And let me [4] ask him, if I may, Judge.

THE COURT: I never finished what I was saying.

MR. YIANNATJI: Oh. Sorry.

THE COURT: I asked him who he wanted to represent him and he requested Mr. Lengyel.

So, consequently, Mr. Lengyel reviewed the Presentence Report with him.

Now, Mr. Hanas, you have a right to be represented by a lawyer here. When you can't afford a lawyer, the Court appoints one for you at public expense.

You probably got the potential of more legal counsel here than most four people that I see in the course of the afternoon. So – you've got a number of lawyers I see here, and you certainly have the right to have anybody that you want and you've retained to represent you.

Mr. Lengyel is court-appointed. And Mr. Lengyel would serve as your attorney when you don't have funds to pay for a lawyer.

Your family wants to hire a lawyer for you. And if that's the case and you want Mr. Yiannatji to represent you, you certainly have a right to do that.

Mr. Gibbs, what's your role here?

MR. GIBBS: Your Honor, I'm here on behalf of American Civil Liberties Union. We filed a motion to [5] allow us to appear (not discernable). I've been asked on behalf of Mr. Hanas to file this petition.

The petition asks that he be placed in a – or, given the opportunity to be placed in a treatment program that is secular in nature, that doesn't violate his free exercise of religion –

THE COURT: Well, let's deal first – let's deal first with his representation. I want to take this a step at a time. Okay.

So you're here to represent him?

MR. GIBBS: Correct, Your Honor, in (not discernable).

THE COURT: Mr. Simmington, what's your role?

MR. SIMMINGTON: Good afternoon. My role is here with Mr. Gibbs. On the Board of Greater Flint ACLU. I have co-signed or at least have my name as listed as co-counsel on the ACLU this afternoon.

THE COURT: Mr. Hanas, you got the potential of any one or [sic] four lawyers here.

Who do you want to represent you?

THE DEFENDANT: I would say (not discernable) –

THE COURT: Pardon me?

THE DEFENDANT: John.

MR. YIANNATJI: He's referring to me, Judge.

THE COURT: Who would you like to represent you?

[6] THE DEFENDANT: I would like John, sir.

THE COURT: That's Mr. Yiannatji?

THE DEFENDANT: Yes, Mr. Yiannatji.

THE COURT: Okay.

THE DEFENDANT: And (not discernable).

MR. YIANNATJI: The American Civil Liberties Union attorneys?

THE DEFENDANT: Yes.

THE COURT: Mr. Gibbs, Mr. Simmington; is that right?

THE DEFENDANT: Yes, sir. Yes, Your Honor.

THE COURT: Okay. Do you want Mr. Lengyel to have any role in this?

THE DEFENDANT: No, sir.

MR. LENGYEL: Your Honor, just for the record, I asked Mr. Hanas upstairs and he told me that same thing. I'm perfectly happy to not proceed.

THE COURT: Okay.

MR. LENGYEL: Thank you, Judge.

THE COURT: Mr. Yiannatji, have you gone over the Presentence Investigation Report?

MR. YIANNATJI: I have, Judge. And I dropped a copy of it off to Mr. Hanas and I asked him to read it. Did you read this report?

THE DEFENDANT: Yes, sir.

[7] THE COURT: Anything you want to add or correct?

MR. YIANNATJI: Well, I guess I have some questions. And that is, is Mr. Hanas still in the Drug Court or have you terminated him from the Drug Court Program?

THE COURT: I'm focusing on the – on the Presentence Investigation Report. And Mr. Hanas is in the Drug Court Program. I thought that was reflected in the report.

MR. YIANNATJI: Yes. Let me –

THE COURT: It's on page four – page numbered four. It's on page numbered two.

MR. YIANNATJI: Okay.

MR. GIBBS: Your Honor, may I state –

MR. YIANNATJI: Just a second.

Judge, I do have –

THE COURT: I guess what I want to do is I want to find out if you want to add or correct anything in the Presentence Report.

MR. YIANNATJI: Yes, I do want to add something to it, Judge.

THE COURT: Okay. What do you –

MR. YIANNATJI: Because what it says here on page one is that they thought he is playing games while in residential treatment programs which cause him to [8] terminate it two times.

Let me explain it chronologically, Judge.

When Mr. Hanas first got into the Drug Court he was released into the care of his family. He was doing quite well with his program. But then the family experienced a few problems with him. So they voluntarily – you never ordered this Judge. It makes it sound like you ordered this. They voluntarily took him to Salvation Army here in Flint. He was in the Salvation Army for a period of time. He got a weekend pass and he went home to his mother and his aunt's home. They felt he was doing fine so they said okay, you can stay here. So he didn't go back to Salvation Army. That's chronologically how that happened.

Well, things went along pretty well for awhile. Then again they experienced a few problems with him so they took him to Grand Rapids and put him in the Salvation Army there. That was voluntary, Judge, not court-ordered.

He was at the Salvation Army. I think he missed a meeting and he was late for another meeting. And they said he had to leave but he could come back in three weeks.

At that point in time he was brought before you, and you told him – with this man right here, with [9] the pastor – and he's been there since until today.

Now, the family hired me – retained me to represent him because certain things were going on in this residential program. And that's how I first got involved in this – in this case.

But that's what I wanted to add to the Presentence Report, is to make – is to clarify what happened in these two residential programs that he was in.

He wasn't really playing around, Judge. And –

THE COURT: Well, let me – let me address what the report says, and you can tell me if it's accurate or if it's not accurate.

MR. YIANNATJI: Okay.

THE COURT: And if there's a conflict, we'll have a sentence hearing.

The report says – and I'm referring to the page that's numbered seven under the caption Substance Abuse Treatment. In September of 2002 he entered the Salvation Army Residential Program located in Flint, Michigan. It goes on to say that he received several misconducts for rule violations. And it cites them and says that he went absent without leave from the program on October 7, 2002.

On November 4, 2002, he entered the Salvation Army Program in Grand Rapids. And in January of 2003 he [10] was terminated from the program after three rule violations.

MR. YIANNATJI: Yes. I don't disagree with those three rule violations, but I'll tell you they were minor in nature. It's like he missed a couple meetings, or he was tardy to one or two. And –

THE COURT: Well, at this point all I want to have is an accuracy of the report, Mr. Yiannatji.

MR. YIANNATJI: Well, that's what I'm – that's what I'm trying to get to you.

THE COURT: Is it accurate or is it not accurate?

MR. YIANNATJI: That's not accurate.

Well, it's accurate that he got three rules violations, but it doesn't tell you what the rules violations were.

THE COURT: Well, is it accurate that he got terminated from the Salvation Army in Flint and he subsequently got terminated from the Salvation Army in Grand Rapids?

MR. YIANNATJI: Yes. But it's not accurate as the termination in Flint does not reflect why he was terminated; because he didn't go back because his family – he wasn't ordered to that program to begin with. The family thought he was doing fine and kept him at home.

[11] THE COURT: Mr. Hanas, did you read over this Presentence Investigation Report?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Is there anything that you want to add or correct to this report other than what Mr. Yiannatji stated?

THE DEFENDANT: No, sir.

THE COURT: Mr. Gibbs, anything you want to add or correct in this report?

MR. GIBBS: Yes, Your Honor.

THE COURT: Ordinarily we only have one lawyer representing the defendant.

MR. GIBBS: I understand.

THE COURT: What is there in the report that's not accurate.

MR. GIBBS: There's an omission in the report, Your Honor.

THE COURT: Okay. What is that?

MR. GIBBS: The omission is that while in the Inner-City Christian Outreach Program Mr. Hanas was given a rosary – a Catholic rosary and a Holy Bible from the Catholic Church by his mother and his aunt. Those were taken away from him by the pastor at the church; told that they were items of witchcraft. He asked to see his priest. He was told he could not see his priest. He [12] attended a service on a Wednesday evening, and at that service he was told along with other participants in the program that in order to complete that program they would have to go up and declare that they were saved.

I'm adding these facts to give you information as to why he's taking the position that his free exercise of religion is being interfered with by placement in this program.

And I'm also asking the Presentence Report reflect that there are secular alternatives to this particular program that Mr. Hanas could be sentenced to. And one of those would be New Paths. And our position is he should be given an opportunity to have that right.

I've filed a motion and a brief in support of that. I have a copy for the Court.

THE COURT: He has what right? You're asking that he have what right?

MR. GIBBS: Oh. He has a right of free exercise of religion, Your Honor.

A right to freely exercise his religious [sic] without being – without fear of being punished.

What I'm afraid is going to happen here, Your Honor, is that he will be punished because he objected to the treatment at the Inner-City Christian Outreach Program. He objected to it because it was interfering [13] with his free exercise of religion.

And he does have a right to freely exercise his religion even if he is under the thumb of the Court in a probationary or sentence capacity. The United States Supreme Court has made that clear and a number of Federal Courts have made that clear.

THE COURT: I misunderstood you. I thought you said he had a right to be in New Paths.

MR. GIBBS: No. He does have a right to a secular alternative, Your Honor.

THE COURT: Well, since we're adding to the report in this context, you might also want to know that Mr. Hanas is in the Inner-City Outreach Program at his request. He had an option. He chose the program.

MR. GIBBS: Not a real option when he faces prison, Your Honor.

THE COURT: Well, I'm not into a debate, Mr. Gibbs. I'm just – since everybody has taken the liberty of elaborating on this, I thought I might interject that aspect also.

Mr. Hanas pled guilty on March 25th, 2002 to the offense of Possession With Intent To Deliver Marijuana.

He has been on a delay of sentence and was on that delay as a part of being in the Drug Court Program.

Do we have a prosecutor here?

[14] MR. YIANNATJI: Unfortunately we don't, Judge.

(Law Clerk confers with the Court.)

THE COURT: Mr. Bard, since you're here representing probation in this matter, is there anything you'd like to say?

MR. BARD: No, sir. I've reviewed the report and spoke to Mr. Noble. And he has indicated that based on the Department of Corrections' Guidelines and in support of the Sentencing Guidelines that a probationary term would be recommended.

THE COURT: Mr. Yiannatji, is there anything you'd like to say on Mr. Hanas' behalf before sentence?

MR. YIANNATJI: Yes, Judge.

You know, in the court is the godfather, Roy, and one of his good deacons from St. Michael's Catholic Church. Father Swiat couldn't be here this afternoon; he had other arrangements that the [sic] had to make.

Judge, his mother and his aunt are in the Courtroom, as is our private investigator, who is the one who witnessed this man over here saying that he had to be saved by his church, otherwise you would be washed out of the program and go to prison, a threat that was repeatedly made to him while he was in the Inner-City Outreach Program.

Judge, I think he's a good young man. He [15] doesn't have any priors. He did have an alcohol-related incident after he entered into Drug Court; pled guilty to that. He's done – I think it was supposed to serve 40 hours community service, which this pastor has developed a forum for.

He's got good support in terms of his relation and his family, Judge.

I would simply ask you to – if you allow him to stay in Drug Court, follow the recommendations of probation. Mr. Hanas upstairs – I went in the holding room with him – told me, he said, you know, I'm just ready to go to jail. I don't want to go back to this place. And I'd ask you to put him in the County Jail pending an opening at New Paths.

Thank you.

THE COURT: Mr. Gibbs, I'll give you the opportunity to say something if you'd like to.

MR. GIBBS: Yes, Your Honor. I'd ask that the Court consider a secular alternative to the religious drug treatment program that he was placed in. And I'd ask the Court to place him in New Paths which is a secular program.

THE COURT: Mr. Hanas, anything you'd like to say?

THE DEFENDANT: I would say that sounds – I [16] would like to go to New Path. Or, if anything, New Path would be good for me, I think. It would be better. I could get my school down there and still try to be able to go to my own church and everything. And it would be more drug rehabilitation and more help for me there. Because I did go to a class there one time for anger management. I

went through the Drug Court Program right before I got put in Inner-City. And I talked to the man in charge down there. I forget his name. But he said that he would – he gave me a call at my house. And he said that he would be able to get me in there. And I talked to him. But that was the day I had to come down here and you sentenced me to Inner-City. And there was nothin' I could do about it.

THE COURT: Okay. Mr. Hanas –

PASTOR: Your Honor, can I speak?

THE COURT: Pastor Otiers (phonetically), I'm going to give you an opportunity to – since Mr. Hanas has been in the Inner-City Program here, I'm going to give you an opportunity to address his progress there.

Also, given the fact that there's been some rather negative aspersions cast on your program, I'm going to also give you an opportunity to address that.

Mr. – and then I'll have a comment after that as well.

[17] You may address the Court.

PASTOR OTIERS: First, I would like to ask who it was – I mean, if I have an accuser, I would like to know who it was that said that they saw me and heard me –

MR. YIANNATJI: They heard you.

PASTOR OTIERS: – tell him – who it was that heard me tell him that if he didn't go forward that he was put out of the program.

MR. YIANNATJI: That he didn't go forward?

PASTOR OTIERS: That's what you said, if he didn't –

MR. YIANNATJI: No. If he didn't come up to the alter, whatever you call it –

PASTOR OTIERS: Okay, whatever.

MR. YIANNATJI: – and be saved –

PASTOR OTIERS: Okay.

MR. YIANNATJI: -- that he'd be washed out, or words to that effect, of the program.

PASTOR OTIERS: Who heard me say that?

MR. YIANNATJI: Would you please stand up, Mr. Carter?

THE COURT: I'm not going to – we're not going to open this up –

MR. YIANNATJI: Okay.

THE COURT: – to this.

[18] Pastor Otiers, if you want to – if you want to give me a report, I'll entertain that. But I'm not going to get into a dialogue here.

PASTOR OTTERS: I will say this; he's done good while he was there. We've had our things. But if he chooses to leave, that's his choice. I have no problem with that. Wish him the best.

MR. YIANNATJI: Can we have the rosary back, sir.

PASTOR OTIERS: I do not have the rosary. I never took it from him.

THE COURT: I would like to clarify something, Pastor Otiers. It's my understanding that your program is a non-denominational program.

PASTOR OTIERS: Yes, sir.

THE COURT: Is that correct?

PASTOR OTIERS: Yes, sir.

THE COURT: Do you have people in the program of various religious beliefs?

PASTOR OTIERS: Yes, sir.

MR. YIANNATJI: Would the Court –

THE COURT: Do you have people of the Roman Catholic faith in your program?

PASTOR OTTERS: I have not checked, but I know we have – I couldn't say for sure, so I don't want to [19] comment on that. I'm not positive on that one.

THE COURT: Anything further to add before I make a decision, Mr. Yiannatji?

MR. YIANNATJI: Judge, perhaps we ought to ask you to afford us an evidentiary hearing so we can find out more about this Inner-City Christian Outreach Program.

You know, the problem with this pastor is that he has no – I don't think he has any drug or alcohol counselors in the program. These folks that are sent over there from the Drug Court they're getting seven hours of hard-core Bible study. He admitted to me that he was part of the Pentecostal Church. And I'm told that he tries to convert all these people.

So I'd ask for an evidentiary hearing. Let's put him on the witness stand. In fact, I have him scheduled for deposition tomorrow afternoon.

THE COURT: Mr. Gibbs, anything you want to add?

MR. GIBBS: Yes, Your Honor.

I think what's going on here is a classic illustration of why it's not a good idea for the government to enter into a partnership with a church. Because this pastor has an absolute right to believe or preach whatever he wants to preach. You're concerned. about whether or not he's picking on the Roman Catholics. [20] The government shouldn't be asking him that.

But because of this partnership and because the Court is sentencing or placing people into this program through state actions – state judicial action, the Court feels the need to do that. And, as a result, you have an excessive entanglement between the state and this religion, where he shouldn't be administered at all. But he also shouldn't be in a position where he has the ability to cause someone to be incarcerated because he doesn't like their religious beliefs and he wants them from the program.

So, all I'm asking for is that Mr. Hanas be given an alternative in a secular program so he doesn't encounter this problem in the future.

THE COURT: Mr. Hanas, you get the last word.

THE DEFENDANT: I just – I just you understand. I go along with my lawyer and everything.

THE COURT: I'm having difficulty understanding you.

MR. YIANNATJI: He has a – there's a forensic report that indicates he has some (not discernable).

THE COURT: All he's got to do is speak up a little louder.

THE DEFENDANT: I just go along with my lawyer, John Yiannatji.

[21] MR. YIANNATJI: And Mr. Gibbs.

THE DEFENDANT: And Mr. Gibbs. I have nothing else to say.

THE COURT: Well, firstly I feel the need to clarify something.

There's been references here both by counsel and by Mr. Hanas to the representation that Mr. Hanas was sentenced to the Inner-City Outreach Program. And no one is sentenced to any program from this Court. We offer people options. And no one in any of the Drug Court situations that we have had has ever been compelled to attend a religious-based program.

When I have people who suggest to me that they belong to a church, when I have people who tell me that they'd like to attend a particular program and that's a viable option, they are given that opportunity. It's not uncommon for me in the course of sentencing when people belong to a church to suggest that they do community service work for their church.

Mr. Hanas was not sentenced – quote, unquote – to the Inner-City Program. Mr. Hanas, as you can see from

the history here, was given opportunities in residential programming. And, actually, Inner-City happened to be the fourth program that Mr. Hanas was given the option to participate in. I expect that had he [22] not been in Drug Court and has this whole staff of people here who were trying to assist him with the difficulties that he's having he probably would be in State Prison today and likely would not be going through this. It's only because of the efforts of the Drug Court staff and the Drug Court that he's not incarcerated somewhere.

Mr. Hanas, what concerns me is two-fold. And it goes without mentioning your substance abuse. That's what got you here. And, secondly, you do not complete the programming that you're in. You don't follow through. You don't finish a program. And the message that that sends to me is that you're – that you're really not truly committed to your recovery. Because I see you jumping from one program to another. You can't follow the rules of the program. You get kicked out of the program and then we try another alternative.

There are some essentials for Drug Court. Number one, you've got to get clean, stay clean, maintain your sobriety. That's the fundamental underlying objective of Drug Court. Secondly, I expect you to be honest in that endeavor.

And what I'm seeing here is what is not really being honest with yourself. And I'm not suggesting to you in saying that that you're consciously lying, but I don't think you're accepting where you're at and I don't [23] think that you're really committed to follow through. Because if you were committed you would follow the rules of the programs that you've been referred to and you'd complete a program.

You have had the opportunity at Oakland Psychological, Salvation Army in Flint, Salvation Army of Grand Rapids, and now Inner-City Outreach Program.

Now, if I accepted everything that was said here about the Christian Outreach Program it still doesn't explain why you get kicked out of these other programs.

THE DEFENDANT: May I say something?

Your Honor, I understand about the other programs I've been in, the Salvation Armys. The Oakland Psychological Clinic was my counselor. But – and the Salvation Armys, I've been there. When I went to the one in Flint, I liked – I did not mind it at all. But I guess I wasn't ready at that time. And I'm just sitting in there with all these people that have addictions like crack and everything. And I've never done that. And I look at them and I think to myself, I'm like, I really didn't have it that bad a problem. I never thought I had that bad of a problem and everything. And I always thought that and everything.

And when I got out of that Salvation Army – [24] 'cause I left and I relapsed – and I went – and I put myself into the other one in Grand Rapids, 'cause I realized I did have a problem. And all I could do is just think about getting drunk or something.

And when I get out of the – I left for the same reason. I accidently [sic] got kicked out of that one for little minor things, like he said. And they terminated me from that program.

But I realize that I do not want to be going through my life in these programs. And I do want to better my life. I just – I do not want to be like that. I want to be successful and everything.

THE COURT: Mr. Hanas, do you think there's a distinction between the person who is addicted to alcohol and the person who is addicted to marijuana and the person who is addicted to cocaine and the person who is addicted to heroin?

THE DEFENDANT: No. Well, now I know because I never thought I could be addicted to smoking and – like alcohol, I was really addicted to. And I know that. I guess it's a bad – I guess it could be considered – like marijuana and everything, I never thought I was addicted to that. I don't know, it's all in the head really.

THE COURT: You hit it right on the head. What you're doing with marijuana is you're messing with the [25] chemical receptors of your brain.

You've been assessed here by more than one agency as having an addiction to marijuana. You've got a history of marijuana, cocaine and alcohol abuse. And the bottom line as far as I'm concerned is you either commit yourself to dealing with your addiction and you follow the rules or you're going to be incarcerated; simple as that. And up to now you haven't committed yourself to finish anything that I've put you in.

And when you walk out of here today I want you to understand that there is not going to be a fourth or fifth or sixth opportunity. You are at the end of the line.

And, incidentally, Mr. Gibbs, I could probably give you a half a dozen alternative programs that he could have the opportunity to be in. I've – his religious beliefs don't play any role whatsoever in what I'm doing here.

Another driving force in what took Mr. Hanas to where he's at, as I sit here and recall, was that he didn't

have any funds. And so this was a program that was made available to him free of charge. That was another driving factor in why he went there.

Mr. Hanas, I'm going to place you on probation. You've been on a delay of sentence and that was prompted [26] because of the Drug Court Program. I'm going to place you on probation for a term of four years.

I'm – the Sentence Guidelines in your case call for a minimum sentence in the range of zero to nine months. I'm going to remand you to the custody of the Sheriff to serve six months in the Genesee County Jail. I'm going to authorize the Sheriff to give you credit for one day that you have been in jail.

And I'm also going to authorize the Sheriff to release you to the New Paths Standard Men's Residential Treatment Program. You're to successfully complete that program.

Mr. Bard, what's your thought with regard to the Boot Camp?

MR. BARD: In speaking with Mr. Noble, that was one of the topics we discussed.

Initially, he doesn't qualify because of the Sentencing Guidelines. But if the Court were to depart, he would qualify as far as we know at this point. And he felt, based on the fact that he was terminated twice basically for not following the rules, that some form of disciplinary type program might help encourage him to make the changes and thought decisions in the future necessary. Because at this point his prognosis for completing probation is slim – slim to none.

[27] MR. YIANNATJI: Judge, if I could point something out.

There was a forensic examination conducted in this. I don't know if you have that in the file with you today. But the man has some severe emotional problems. They were not – they didn't reach the level – psychological problems. They didn't reach the level that would – he would not be deemed suitable to stand trial but they were serious in nature.

I don't know if you've got that forensic report there in the file with you today or not.

I'm looking for my copy of it and I haven't been able to locate it.

So there's a mental aspect to this whole thing. It's not just an addiction problem.

I attached a copy of that to my motion for ex parte order.

This file has gotten rather thick, Judge.

Have you located it, sir?

THE COURT: I have the forensic report.

MR. YIANNATJI: Oh, okay.

As you can see, Judge, there's other problems than addiction problems. And I don't know how one structures a suitable recovery program when he has that kind of mental – those kinds of mental problems.

[28] I'm not here to have the psychiatric report (not discernable) used as a shield. It's just a fact. I mean, that's

the way things are. And, you know, I don't know what we can do for him.

THE COURT: I'm going to remand Mr. Hanas to the custody of the Sheriff.

I'm going to order a psychological evaluation by Doctor Sommerschield. I'm going to ask Doctor Sommerschield to – in making his evaluation to consider the alternative placements of the Boot Camp and New Paths.

In the event that psychologically he would be eligible for the Boot Camp, then I will provide for placement at the Boot Camp and then subsequently at New Paths in the Electronic Monitoring Program aftercare.

In the event that he is psychologically not suited for the Boot Camp, then I will place in the New Paths Standard Men's Program followed by Electronic Monitoring.

Mr. Hanas, you're not to use any illegal drug or alcoholic beverages. You're to submit to periodic Breathalyzer and drug testing.

You're not to own or possess any firearms. You're not to violate any criminal laws.

There will be financial obligations here that [29] will include a $50 jail processing fee, a $60 crime victim assessment fee, and probation supervision fees of $10 a month for a total of $480. There is also a $150 forensic laboratory fee.

Mr. Hanas, you have a right to be represented by an attorney for any post-conviction motions. If you can't afford a lawyer, the Court appoints one for you at public expense.

If you wish a court-appointed attorney you should complete the form Mr. Yiannatji is providing you and return it within 42 days.

Today I'll ask you to sign a receipt for this questionnaire form.

(Right to attorney form tendered.)

THE COURT: Do you have any questions, Mr. Hanas?

MR. YIANNATJI: I have a question.

Is he to consider himself – or am I to consider my client still in the Drug Court Program, or is he terminated from that?

THE COURT: He is – if he goes to the Boot Camp and New Paths, there will be a period of time when he wouldn't be at the Drug Court.

I will – if Mr. Hanas completes the Boot Camp or successfully completes the first 60 days of the [30] Standard – of the New Paths Standard Residential Program, I will reconsider him to return to the Drug Court.

MR. YIANNATJI: Thank you, Judge.

MR. GIBBS: Thank you, Judge.

THE COURT: I'll ask the audience to remain seated until Mr. Hanas is excused.

Mr. Yiannatji, I will be preparing a Jail Program Order to notify the Sheriff of the programming he's been approved for. And you'll be able to pick that up here tomorrow morning.

MR. YIANNATJI: Okay. Do you want me to do my own order for Doctor Sommerschield's psychological evaluation?

THE COURT: That's not necessary.

MR. BARD: The probation department can take care of it.

[31] STATE OF MICHIGAN)
) SS:
COUNTY OF GENESEE)

I, Teresa A. Trosko, CER 5595, do hereby certify that I transcribed the above entitled video recorded proceedings at the time and place herein before set forth, that the same was reduced to typewritten form; and that the foregoing 30 pages constitutes a true and correct transcript of the video recorded proceedings.

/s/ Teresa A. Trosko
Teresa A. Trosko, CER 5595
Certified Electronic Recorder
(810) 257-3281

Dated: March 27, 2003
Flint, Michigan

APPENDIX C

JUDGMENT OF SENTENCE
☒ COMMITMENT TO JAIL

STATE OF MICHIGAN **JUDICIAL DISTRICT** **7TH JUDICIAL CIRCUIT** GENESEE COUNTY CIRCUIT COURT	**CASE NO.** 02-009621-FH-R

ORI- MI-250015J	Court Address COUNTY CLERK FLINT, MI 48502	Court Telephone No. 810-257-3220

Police Report No.

THE PEOPLE OF ☒ The State of Michigan ☐ _____ _____	V	Defendant's name, address, and telephone no. HANAS, JOSEPH, RAYMOND 5506 ALEXANDER GRAND BLANC, MI 48439

CTN/TCN	SID	DOB
250100-42901		3/04/82

THE COURT FINDS:

1. Defendant was found guilty on 3/25/02 (Date) of the crime(s) as stated below:

Count	CONVICTED BY			CRIME	CHARGE CODE(S) MCL citation/ PACC Code
	Plea*	Court	Jury		
1	G			CONT SUB-DEL/ MFG MARIJUAN	3333.74012D3

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere; use "MI" for guilty but mentally ill.

2. Defendant

☒ represented by an attorney: YIANNATJI, JOHN L.,

☐ advised of right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.

☐ 3. Conviction reportable to Secretary of State.

Defendant's driver license number is: _____

☐ 4. Licensing sanction reportable to State Police.

☐ Revoked ☐ Suspended __ days ☐ Restricted __ days

☐ 5. HIV testing and sex offender registration is completed.

☐ 6. Defendant has been fingerprinted according to MCL 28.243.

IT IS ORDERED:

☒ 7. Defendant is sentenced to jail as follows: ☐ Report at __ m.

Count	Date Sentence Begins	Sentenced Mos.	Sentenced Days.	Credited Mos.	Credited Days	To Be Served Mos.	To Be Served Days
1	3/13/03	6			1		183

Release Authorized For the Following Purpose	Release Period From	Release Period To
☐ Upon payment of fine/costs ..... ☐ To work or seek work ..... ☐ For attendance at school ..... ☐ For medical treatment ..... ☐ Other _____		

8. Defendant shall pay as follows:

$ 60.00 CRIME VICTIM FEE
$ 150.00 FORENSIC FEE
$ 50.00 JAIL PROCESSING FEE
$ 480.00 PROBATION SUPERVISION FEE
$ 740.00 TOTAL

The due date for payment is _____. Fine, costs, and fees, not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed. ☐ Defendant shall serve ___ days in jail beginning _____ for failure to pay on time.

☒ 9. Defendant shall be placed on probation for 048 months and abide by the terms of probation. (see separate order)

☐ 10. Defendant shall complete the following rehabilitative services.

☐ Alcohol Highway Safety Education ☐ Treatment (☐ outpatient, ☐ inpatient, ☐ residential, ☐ mental health)

Specify:

☐ 11. The vehicle used in the offense shall be immobilized or forfeited. (See separate order.)

☐ 12. The concealed weapon board shall ☐ suspend for ___ days ☐ permanently revoke the concealed weapon license, permit number _____, issued by _____ County.

☒ 13. Other: SEE PAGE 2 OF THIS ORDER.

3-13-03	(SEAL)	/s/ R.M. Ransom	19226
Date		Judge/Magistrate	Bar no.
		ROBERT M. RANSOM	

☒ 13. Other:

DEFT REMANDED TO SERVE (6) MO. IN COUNTY JAIL-WITH RELEASE TO NEW PATHS STANDARD MENS PROGRAM. DEFT TO BE EVALUATED FOR SAI (BOOT CAMP) PROGRAM. (DEFT TO HAVE PSYCH. EVAL. BY DR. SUMMERSCHIELD FOR ALTERNATIVE PROGRAMS FROM NEW PATH & SAI.) DEFT TO PAY PROBATION SUPERVISION FEES AT A RATE OF $10.00 PER MONTH, PAY CRIME VICTIM FEE, LAB FEE AND JAIL PROCESSING FEE. DEFT MAY BE RE-EVALUATED AFTER (60) DAY TERM AT NEW PATHS FOR DRUG COURT.

APPENDIX D

STATE OF MICHIGAN

IN THE 7TH CIRCUIT COURT
(COUNTY OF GENESEE)

PEOPLE OF THE
STATE OF MICHIGAN,

vs

JOSEPH RAYMOND HANAS,

Defendant.
_____/

CIRCUIT COURT NO.
02-9621-FH

VIDEOTAPED

MOTION HEARING

BEFORE THE HONORABLE ROBERT M. RANSOM,
CIRCUIT JUDGE

FLINT, MICHIGAN – Thursday, January 22, 2004

APPEARANCES:

For the Plaintiff: TAMARA J. PHILLIPS (P56505)
Assistant Prosecuting Attorney
900 South Saginaw Street
Flint, Michigan 48502

For the Defendant: JOHN L. YIANNATJI (P26757)
Attorney for Defendant
310 E. Court Street
Flint, Michigan 48502
(810) 233-0785

Recorded by: Via Video Recorder

Transcribed by: Jan Fagerman CER 7125
Certified Electronic Recorder
(810) 424-4454

[2] TABLE OF CONTENTS

WITNESSES: PEOPLE PAGE

None.

WITNESSES: DEFENDANT

None.

OTHER MATERIAL IN TRANSCRIPT

Argument by defense attorney Mr. Yiannatji 4
Argument by prosecuting attorney Ms. Phillips 5
Ruling by Judge 12

[3] Flint, Michigan

Thursday, January 22, 2004

(At 3:54 p.m., Court reconvenes)

THE COURT: The People of the State of Michigan versus Joseph Raymond Hanas, 02-9621-FH.

MR. YIANNATJI: Good afternoon, Your Honor. John Yiannatji on behalf of Mr. Hanas who is present in Court.

THE DEFENDANT: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Hanas. Hello, Mr. Chambers.

MR. YIANNATJI: Judge, if I may make a few short comments.

THE COURT: Are you here on a motion?

MR. YIANNATJI: On a motion to reconsider him for Drug Court, but just before – or just after I got here, I was handed an updated pre-sentence report, and I'm starting my 28th year of practicing law, and in all those years I've never seen a line written like this that says this

officer is proud of Mr. Hanas and his positive adjustment. I've never seen that word used with regards to a client of mine, that the officer's proud. I just wanted you to make note of that, Judge.

THE COURT: Okay.

MR. YIANNATJI: I think you've read it [4] anyway.

THE COURT: Well, I read the update. What's the bottom line, Mr. –

MR. YIANNATJI: Well, the bottom line is, Judge, he's done everything that's been asked of him. When I first met Joe, and his mother and aunt brought him in my office, I'm going to be totally honest with the Judge, Joe. I thought of him as being awfully immature, frankly, Judge. You know, it's not that he wasn't taking things seriously, but as Dr. Sommerschield pointed out, you know, he was just a model candidate for a boot camp, but, Judge, you know, the young man tried hard, got through it successfully. You know, got through the New Paths program. It notes in here that he's trying to get his G.E.D. He does have a learning disability, so he's having a little bit of problem with that, but he just told me that he has completed all the sections. He only needs 20 more points to pass it and he'll do that February the 13th I think you said.

THE DEFENDANT: Yes, sir.

MR. YIANNATJI: February the 13th and he's working full time. Frankly, Judge, and this is only my opinion. I've been to Drug Court, I think, three times. This would be my third time, and by my [5] assessment, comparing him to the others in this program, he's done far and

away more than any of the others that have successfully completed this program today.

So, I would ask the prosecutor to consider reinstating him to Drug Court and I further ask that he be allowed to withdraw his plea.

THE COURT: Ms. Phillips, what's your position on this?

MS. PHILLIPS: Judge, this motion was up for Monday and when I called Mr. Yiannatji, I had indicated to him that it wasn't necessarily going to be the prosecutor's office who would stand in the way, that we were pretty much willing to do what the Drug Court team wished to do with him, and then leave the decision up to Your Honor, but in speaking with Ms. Melton, the problem that we have here is kind of different.

I guess we have Mr. Hanas who was terminated from the Drug Court program because of what he failed to do while he was in the program. Although I am quite proud to see what he has done subsequent to his Drug Court termination, the problem that Ms. Melton and I have is he was an official participant, he was terminated of the program for his lack of progress and [6] failure to comply with the requirements that we set forth, and we cannot – we're concerned with setting the precedent of allowing him to come back into the program, and the only other point that I wanted to make is that even if were allowed to do that, he would not have his plea withdrawn or set aside, because when you come into Drug Court, you enter your plea subject to having it set aside once you're successfully discharged.

MR. YIANNATJI: Yeah, I understand that, Ms. Phillips. Just in brief response, Judge, let me point out to you, and I know you remember this case quite well, but one of the reasons that he was expelled from Drug Court came after I got involved with Mr. Hanas and representing him. He was placed in the Inner City Christian Outreach Program. Subsequent to his placement in there, he and I both had difficulties with Pastor Rottiers and the matter was brought before you, and that's really why he got washed out of here. I'm told that subsequent to Mr. Hanas' problems with that Inner City Christian Outreach Program the Drug Court has stopped sending people to that program and, so, I'm just pointing that out to you, Judge, as to the reason, ultimately, why he was drummed out of Drug Court.

[7] THE COURT: I have a very good memory of the whole process.

MR. YIANNATJI: I know, Judge.

THE COURT: And just as an aside, I don't know whether – well, never mind.

MR. YIANNATJI: Here. Let me give this back to you.

THE COURT: I was going to say as a result of your action, Mr. Simmington, we quit sending people there. I don't know if that's good or bad. I don't know if it was fair to the program or not, but we don't do it.

Mr. Hanas, why do you want to be back in Drug Court?

THE DEFENDANT: Sir, I want to be back in the Drug Court to get my felony off my record. That is about

it. I'm doing good. I'm doing everything I should have done my whole life right now, and I can see that I'm at a point in my life where it's like – I'm making money. I've been attending meetings. I go to Freedom Train every now and then, but work is my main thing. I go six days a week. I really don't feel that I need Drug Court, but I would like to have my felony off my record.

THE COURT: Well, you pretty much answered [8] the question, Mr. Hanas. As far I'm concerned, your felony conviction is a secondary thing. The primary concern of Drug Court is you and your recovery.

If you told me you wanted to come back into Drug Court irrespective of your conviction, to complete the Drug Court programming, to have the support of Drug Court and the alumni group, to support your recovery, I would be, and I know the staff would be, favorably disposed to that, but when you tell me you don't really need this and the only motivation is to get rid of your conviction, that is not a legitimate reason for being in Drug Court.

THE DEFENDANT: I have plenty of support. My family's very good support. I don't do very much of nothing but just work and I barely ever go out. I go to meetings, like the meetings they wanted me to go to in Drug Court. I work all the time. It's like it would just interfere.

THE COURT: Mr. Hetherington, I know I'm catching you off guard here, but would you like to try to enlighten Mr. Hanas on the concept of recovery.

MR. HETHERINGTON: Recovery is trying to recover from something, okay, and it sounds like to me like you're already there. You know, the issue is that you're

coming in here and you're telling us that, [9] you know, you've got all the support in the world that you need. Basically, what I hear you saying is that you don't need us outside of the fact that you want to get your felony off your record. You don't need us to help you support your recovery program.

THE DEFENDANT: I want to be in Drug Court and I want to successfully complete the program.

MR. HETHERINGTON: Hold on just a moment, okay, because what I'm hearing you say is that, you know, I have my family's support of me, I go to meetings, I do all of these things out here, and so as a result of that, you're doing everything that you need to do in order to recover, and as a result of that, we have nothing here that we can offer you, because you're already doing it. Does that make sense to you?

MR. YIANNATJI: Well, I understand my – I can understand it, sir, but, frankly, I do know what more this –

THE COURT: What I was thinking of, Mr. Hetherington, is Mr. Hanas has the perception that he's got the world by the tail here.

MR. HETHERINGTON: Right.

THE COURT: He's succeeded. This was a bad dream that's behind him and I was thinking of your [10] experience in recovery and whether that's really true.

MR. HETHERINGTON: Well, and I said, basically, you know, that he alleged that he would work in the program. The issue is that recovery is a life long process. Recovery is something that you need to do the rest of your life.

THE DEFENDANT: I understand that.

MR. HETHERINGTON: And you need to be working at that the rest of your life. The issue is that it's, again, as I said a few minutes ago, you're already telling us that you're doing that. You're already saying that, you know, you're going to meetings, you've got support, you're doing everything that you need to do. You need to continue with that support. I agree with that wholeheartedly. Okay?

But on the other hand, I'm not sure that there's anything here we can offer you to help you along with that outside of getting your felony conviction off your record. But, outside of that, I don't see that there's anything else we can do.

MR. YIANNATJI: Judge, if I may respond briefly, you know, it sounds to me like Mr. Hetherington is basically punishing my client for – or not punishing. That's the wrong word. Is basically arguing against my client's position because he's [11] doing the right thing. That hardly seems right.

THE COURT: Mr. Yiannatji –

MR. YIANNATJI: And I say that respectfully.

THE COURT: – I don't think this has anything to do with Mr. Hetherington. I think it has everything to do with Mr. Hanas.

MR. YIANNATJI: Absolutely.

THE COURT: And Mr. Hanas summarized the whole thing with exactly what he's told us here. He, in his own words, he said I really don't need Drug Court, I've

made it, all I'm interested in is erasing the conviction. In that context, I'm not interested in having Mr. Hanas in Drug Court.

THE DEFENDANT: Excuse me, sir. I –

THE COURT: I'm not into debating it, Mr. Hanas. I think you're missing the boat and I'll tell you why and all I'm doing is just repeating what Mr. Hetherington – the message Mr. Hetherington was saying. Recovery is a life time endeavor. I don't think you realize that.

THE DEFENDANT: I understand.

THE COURT: I think that you believe you've got it made, you conquered the problem and now it's just a matter of living your life, and as Mr. Hetherington pointed out, that is not reality, because [12] if you go forward from today with that attitude, I will give you a written guarantee that you'll trip, and you will relapse, and you'll be in a problem again. You cannot go about your recovery with that frame of mind and succeed with it. I've seen them come and go through Drug Court and I have never seen it fail. Anybody who goes about their recovery with the approach that you are, will relapse, and that's where you're headed.

At this point, I don't see that the Drug Court can do Mr. Hanas any good, Mr. Yiannatji, and so I'm going to deny the motion.

(At 4:08 p.m., proceedings concluded)

Tape No. 01/22/04 4:08 p.m.

[13] STATE OF MICHIGAN)

COUNTY OF GENESEE)

I, Jan Fagerman, do hereby certify that this transcript, consisting of 13 pages, is a complete, true and correct transcript to the best of my ability of the videotaped proceedings taken in this case on Thursday, January 22, 2004, before the Honorable Robert M. Ransom, Circuit Judge.

July 15, 2004 /s/ Jan Fagerman

JAN FAGERMAN CER 7125
107 Courthouse
Flint, Michigan 48502
(810) 424-4454

APPENDIX E

STATE OF MICHIGAN
7TH CIRCUIT COURT FOR GENESEE COUNTY

STATE OF MICHIGAN,
Plaintiff

CASE NO: 02 9621 FH
JUDGE: RANSOM

vs.

JOSEPH RAYMOND HANAS,
Defendant

ARTHUR A BUSCH P-33872
GENESES Cy Prosecuting Attorney
100 Courthouse
Flint MI 48502

JOHN L. YIANNATJI P-26757
Attorney for Defendant
310 E. Court St.
Flint MI 48502
810/233-0785

ORDER DENYING AMENDED MOTION FOR DRUG COURT REINSTATEMENT

At a session of said Court in the City of Flint
County of Genesee, State of MI
on the ___day of ___2004

PRESENT: THE HONORABLE ROBERT RANSOM, CIRCUIT JUDGE

UPON MOTION OF DEFENDANT, and the Court being fully advised in the premises, NOW THEREFORE IT IS ORDERED that defendant's *Amended Motion For Drug Court Reinstatement* is hereby denied for reasons stated on the record.

Date: 2-10-04 ROBERT M. RANSOM P-19226
HONORABLE ROBERT M. RANSOM

TAMARA J. PHILLIPS P-56505
Assistant Prosecuting Attorney
Date:___

APPENDIX F

Court of Appeals, State of Michigan

ORDER

People of MI v Joseph Raymond Hanas	Henry William Saad Presiding Judge
Docket No. 254434	E. Thomas Fitzgerald
LC No. 02-009621 FH	Hilda R. Gage Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ HW Saad
Presiding Judge

[Seal] A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

May 26, 2004 /s/ Sandra Schultz Mengel
Date Chief Clerk

APPENDIX G

Order
January 27, 2005

126595 & (10)

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RAYMOND HANAS,

Defendant-Appellant.

_____/

Michigan Supreme Court
Lansing, Michigan

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 126595
COA: 254434
Genesee CC: 02-009621-FH

On order of the Court, the motion to practice *pro hac vice* is GRANTED. The application for leave to appeal the May 26, 2004 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH, KELLY, and MARKMAN, JJ., would grant leave to appeal.

[Seal]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2005 /s/ Corbin R. Davis
Clerk

MOTION FILED
JUN 3 - 2005

(2)

No. 04-1461

In The
Supreme Court of the United States

JOSEPH RAYMOND HANAS,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

On Petition for Writ of Certiorari
To The Court Of Appeals, State Of Michigan

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE AMERICAN JEWISH CONGRESS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Marc D. Stern
Counsel of Record
American Jewish Congress
825 Third Avenue, Suite 1800
New York, NY 10022
(212) 360-1545

June 3, 2005

Attorney for *Amicus*

No. 04-1461

In The
Supreme Court of the United States

JOSEPH RAYMOND HANAS,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

On Petition for Writ of Certiorari
To The Court Of Appeals, State Of Michigan

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2(a) of this Court's rules, American Jewish Congress, by its attorneys, moves this Court for an order permitting it to file the attached brief *amicus curiae* in support of the Petition for Certiorari. Petitioner consented to the filing of the brief. Respondent refused to give its consent.

The American Jewish Congress has participated in most of this Court's litigation involving the religion clauses of the First Amendment, most recently as counsel in *Cutler v. Wilkinson*. The attached brief calls the Court's

attention to legal authorities in addition to those cited in the Petition for Certiorari.

Marc D. Stern
Counsel of Record
American Jewish Congress
825 Third Avenue, Suite 1800
New York, NY 10022
(212) 360-1545
Attorney for *Amicus*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICUS* v

REASONS FOR GRANTING THE WRIT 1

I. THE COURT HAS UNWAVERINGLY INSISTED THAT GOVERNMENT MAY NOT COERCE PARTICIPATION IN RELIGION 1

II. CONGRESS AND THE EXECUTIVE BRANCH HAVE UNIFORMLY INSISTED ON THE NON-COERCION PRINCIPLE 7

A. Congress 7

B. Executive 8

III. THE EXPLOSIVE GROWTH IN DRUG COURTS AND THEIR USE OF COERCIVE MEASURES TO COMPEL DRUG REHABILITATION ADD TO THE IMPORTANCE OF THIS CASE 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

CASES

Bearden v. Georgia, 461 U.S. 660 (1983) 3

County of Allegheny v. ACLU, 492 U.S. 573 (1989) 2, 5

Cutter v. Wilkinson, ___ U.S. ___ (2005) 2

Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004) 2

Engel v. Vitale, 370 U.S. 421 (1962) 4

Everson v. Bd. of Educ., 330 U.S. 1 (1947) 3

Freedom From Religion Foundation v. McCollum, 324 F.3d 880 (7th Cir. 2003) 6

Hicks v. Fesock, 485 U.S. 624 (1989) 3

Lee v. Weisman, 505 U.S. 577 (1992) 1, 4, 5

Lemon v. Kurtzman, 403 U.S. 602 (1971) 7

Santa Fe ISD v. Doe, 530 U.S. 290 (2000) 4, 5

School District of Abington Twshp. v. Schempp, 374 U.S. 203 (1963) 2

Tate v. Short, 401 U.S. 395 (1971) 3

Torcaso v. Watkins, 367 U.S. 488 (1961) 4

STATUTES/FEDERAL REGULATIONS/EXECUTIVE ORDERS

42 U.S.C. § 290kk-1(f)(1) 8

42 U.S.C. § 604a(c) 7

42 U.S.C. § 3000x-65(e)(1)(A) 8

7 C.F.R. § 16.3(b) 9

24 C.F.R. § 5.109(c) 9

28 C.F.R. § 38.2(b) 9

29 C.F.R. § 2.33(b)(1) 9

34 C.F.R. § 75.52(2) 9

38 C.F.R. § 61.64(c) 9

42 C.F.R. § 54.4 9

45 C.F.R. § 87.2 9

45 C.F.R. § 260.34(c) 9

45 C.F.R. § 260.34(f) 9

45C.F.R. § 260.34(g) 9

68 Fed.Reg. 56,431 (September 30, 2003) 10

68 Fed.Reg. 56,460 (September 30, 2003) 10

69 Fed.Reg. 31,885 (June 8, 2004) 10

Executive Order 13279 (December 12, 2002) 8

OTHER AUTHORITIES

McConnell, M.W., Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 WM. & MARY L.REV. 2105 (2003) 2, 5

McConnell, M.W., Coercion: The Lost Element of Establishment, 27 WM. & MARY L.REV. 933 (1985-86) 2

Drug Courts: A National Phenomenon (National Drug Court Institute, American University 2004) 11

Drug Court Activity Update: Summary Information on All Programs and Detailed Information on Adult Drug Courts (OJP Drug Court Clearinghouse and Technical Assistance Project) (2001) 11

INTEREST OF THE *AMICUS*

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, economic, and religious rights of American Jews. While Jews, like many Americans, have divided views on the exact boundary between church and state, they are united in believing that government may not coerce any citizen to participate in a religious exercise. This Court's cases treat that proposition as a bedrock constitutional principle. Because Michigan has blatantly violated it, this Court should grant *certiorari*.

REASONS FOR GRANTING THE WRIT[1]

Whatever their individual views on the precise scope of the Establishment Clause, no member of this Court, let alone a majority of them, has suggested that the Constitution permits government to coerce participation in a religious program at the pain of incarceration. On the contrary, all of the Justices who have expressed views on the subject have held such direct coercion wholly outside the authority of government. The Michigan courts nevertheless upheld precisely such coercion without offering any explanation for their departure from well-settled law.

I. THE COURT HAS UNWAVERINGLY INSISTED THAT GOVERNMENT MAY NOT COERCE PARTICIPATION IN RELIGION

We begin with the opinions of Justices who believe that the Court has read the Establishment Clause too broadly to improperly restrict state decisions regarding religion. We do so not because their views state the outer boundaries of the law, but because even on their narrower view of the Clause, Michigan's treatment of Hanas violates its core values.

In *Lee v. Weisman*, 505 U.S. 577, 644 (1992), Justice Scalia, for himself and three other Justices, asserted that "the coercion that was a hallmark of historical establishments of religion was coercion of religious orthodoxy ... by force of

---

[1] No person or entity other than the *amicus* participated in the preparation of this brief, or paid for the costs of its preparation.

law and threat of penalty" (emphasis in original), and not merely coercive peer pressure. See also *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, ___ (2004) (Rehnquist, J., dissenting); *id.* at ___ (O'Connor, J., dissenting) and *id.* at ___ (Thomas, J., dissenting); *Cutter v. Wilkinson*, ___ U.S. ___, ___ (2005) (Thomas, J., concurring).

Likewise, in *County of Allegheny v. ACLU*, 492 U.S. 573, 661 (1989) (Kennedy, J., dissenting), see also, *id.* at 664-65, the dissenters insisted that coercion was an essential element of any Establishment Clause claim. See also *School District of Abington Twshp. v. Schempp*, 374 U.S. 203, 316 (1963) (Stewart, J., dissenting) ("in the absence of coercion" to participate in school prayer, such prayers are constitutional).[2]

Enforced participation in a religious program of drug rehabilitation is the price Hanas was compelled to pay to avoid a criminal record and actual incarceration. This is undoubtedly coercion "by force of law and threat of

---

[2] Judge (Professor) Michael W. McConnell, a critic of much existing Establishment Clause law, has written two law review articles underscoring the importance of non-coercion as a core principle of the Establishment Clause: M.W. McConnell, Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 WM. & MARY L.REV. 2105, 2136-44 (2003) ("Establishment at the Founding"); M.W. McConnell, Coercion: The Lost Element of Establishment, 27 WM. & MARY L.REV. 933 (1985-86).

penalty."[3] To use Justice Kennedy's alternative formulation, the order of the drug court judge to Hanas, a Catholic, to attend a Pentecostalist rehabilitation residence program or be incarcerated, is a textbook case of governmental power being deployed to "further the interest of religion through the coercive power of government."

It is not just those Justices who read the Establishment Clause more narrowly than the Court who have pointed to coercion as a hallmark of an established religion. In *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947), this Court observed, in its first full modern exposition of the Establishment Clause, that pursuant to the Clause, government can neither "force nor influence a person to go to or to remain away from church against his will ...."

---

[3] Hanas was not jailed conditionally so that he would in the future comply with a court order, but unconditionally as punishment for completed violations of Michigan's criminal law. His incarceration was purely penal in nature, and, hence, literally a penalty. *Cf. Hicks v. Fesock*, 485 U.S. 624 (1989) (distinguishing between civil and criminal contempt). Hanas could avoid incarceration only by submitting—under a judge's order—to residence in a diversion program in which he was compelled to participate in a program of religious indoctrination. It should not matter that if Hanas had adequate financial resources, he could have participated in a secular program. His right to be free of imprisonment because of his religious views cannot be dependent on his lack of financial resources. *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971).

Notwithstanding this long-ago enunciated principle, Hanas was forced to attend a Pentecostalist religious program and stay away from his own Catholic church and its clergy, under the direct authority of the drug court. [Petition for Certiorari at 5-6.]

At least two decisions of this Court have found full-blown Establishment Clause violations where coercion (as defined in those cases) existed, even as those decisions leave untouched the settled rule that coercion is a sufficient, but not necessary, prerequisite to an establishment of religion. *Engel v. Vitale*, 370 U.S. 421, 430-31 (1962).

In *Lee v. Weisman*, *supra*, 505 U.S. at 599, this Court held students could not be compelled to listen to a non-sectarian graduation prayer: "No holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise." This is because (*id.* at 587), "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in a way which establishes a [state] religion ...." *Cf. Torcaso v. Watkins*, 367 U.S. 488 (1961) (invalidating statute requiring a belief in God as a condition for holding public office).

In *Santa Fe ISD v. Doe*, 530 U.S. 290, 312 (2000), involving student-led prayer at high school athletic events, a majority of this Court held that because the practice forced students to choose between attending games and their religious liberty, "[t]he Constitution demands [that school officials] may not force this difficult choice upon these students, 'for ... [i]t is a tenet of the First Amendment that

the States cannot require its citizens to forfeit their rights and benefits as the price of resisting conformance to state-sponsored religious practice,'" citing *Lee*, *supra*. The dissenters did not question the existence of a constitutional ban on coercion. They simply denied coercion was present on those facts.

If voluntary attendance at graduation or a school ball game—where there is no official penalty for non-participation—is coercive, surely compulsion to attend a religious drug rehabilitation program under the threat of incarceration and a criminal record is coercive.

In *Santa Fe*, *Lee*, and other cases, Justices of this Court have disagreed over whether coercion is a necessary and indispensable element of an Establishment Clause claim. *County of Allegheny v. ACLU*, *supra*, 492 U.S. at 602-03 (plurality); *id.* at 627-28 (O'Connor); *id.* at 650, n. 6 (Steven, J.); *id.* at 661 (Kennedy, J.); and whether indirect forms of coercion such as peer pressure are unconstitutionally coercive (compare the opinion of Justice Kennedy in *Lee v. Weisman*, *supra,* 505 U.S. at 592-93 (opinion of the Court); *id.* at 620-21 (Souter, J.), with the dissent of Justice Scalia, *id.* at 632, 639). No Justice, however, has ever denied that sending people to jail for refusing to accept unwelcome religious preachments was a denial of Establishment Clause rights. As Judge McConnell has observed, compelled participation in religious exercises was one of the hallmarks of colonial era establishments at which the Establishment Clause was targeted, Establishment at the Founding, *supra*, n. 2, 44 WM. & MARY L.REV. at 2143.

Petitioners have comprehensively canvassed the decisions of the lower courts applying these principles to compelled attendance at religiously-based alcohol and narcotics programs. [Petition at 11-15.] They demonstrate that most, but not all, courts correctly apply these principles to ban coerced attendance or participation in religiously-based alcohol or drug rehabilitation programs.[4] See Petition at 12-18. There is no need to repeat that discussion. Resolving that dispute is sufficient grounds for review here.

The U.S. Court of Appeals for the Seventh Circuit has treated as beyond question the proposition that state officials may not coerce a potential parolee to reside at a religious-based halfway house,

> [b]ecause the Supreme Court will not allow a public agency to force religion on people even if [an] agency honestly and indeed correctly believes that it is the best way of achieving a secular end that is within government's authority to promote ... [ ]; the state may not require offenders to enroll in [a religious halfway house] even if it is the best halfway house for any or even all offenders.

---

[4] This case does not present any question about compelled attendance at a purely secular program under religious auspices. The program Hanas was compelled to attend was thoroughly religious in content and operation.

Freedom From Religion Foundation v. McCollum, 324 F.3d 880, 882 (7th Cir. 2003). The Michigan courts, for reasons they chose not explain were oblivious to what was obvious to the Seventh Circuit.

II. CONGRESS AND THE EXECUTIVE BRANCH HAVE UNIFORMLY INSISTED ON THE NON-COERCION PRINCIPLE

A. Congress

Congress, too, understands that as a matter of constitutional first principles it may not coerce unwilling citizens to participate in social service programs in which religion is an essential element. In allowing more federal funding to flow to "faith-based" programs on equal terms with secular programs, and in departing from the "no-aid" rule of cases such as *Lemon v. Kurtzman*, 403 U.S. 602 (1971), Congress nevertheless insisted that no person be coerced to participate in religious activities or programs.

In the very first of these statutes, the Temporary Assistance to Needy Families Act (TANF), 42 U.S.C. § 604a(c), Congress provided that government could not deny participation to a grantee because it was faith-based. It also prescribed, contrary to then-settled administrative practice, that it would not require faith-based organizations to strip themselves of religious elements and control to be eligible for government contracts and grants. However, the opening to religious participation was carefully limited. Among the restrictions Congress imposed was the requirement that no one could be coerced to attend a faith-based provider program:

> (1) If an individual ... has an objection to the religious character of the organization or institution from which the individual receives, or would receive, services funded under any program described in ... this section, the State in which the individual resides shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, with assistance from an alternate provider that is accessible to the individual and the value of which is not less than the value of the assistance to which the individual would have received from such organization.

Similar language appears in the Mental Health Block Grant, 42 U.S.C. § 3000x-65(e)(1)(A). In one respect, that statute goes even further than TANF. To ensure that desperate persons were not coerced into accepting religious services by their ignorance of available alternatives, the latter act also required faith-based agencies receiving such funds to notify beneficiaries that they had this right, *id.* at (e)(2). Identical language requiring alternative providers is found in at least one other statute, the Substance Abuse and Mental Health Services Act, 42 U.S.C. § 290kk-1(f)(1).

B. Executive

Eschewing formal legislation, and frustrated by the refusal of Congress to globally legislate faith-based equality in all government programs, President Bush ordered the global implementation of charitable choice. Executive Order

13279 (December 12, 2002). That order has been implemented by a series of departmental regulations which, albeit in different (and possibly insufficient) fashion, also guard against coerced participation in religious activity.

These new regulations provide (a) that no participant can be compelled to participate in a religious exercise; and (b) that any religious exercises which are part of a government funded program must take place separate in time and place from secular portions of the program. See, *e.g.*, 45 C.F.R. § 260.34(c) (OFCCP) ("participation must be voluntary for the beneficiaries of these programs or services"); 45 C.F.R. § 87.2 (Department of Labor) (same); 29 C.F.R. § 2.33(b)(1); 7 C.F.R. § 16.3(b) (Department of Agriculture) (same); 24 C.F.R. § 5.109(c) (HUD) (same); 28 C.F.R. § 38.2(b) (Justice Department) (same); 34 C.F.R. § 75.52(2) (Department of Education) (same); 45 C.F.R. § 260.34(f); 45 C.F.R. § 260.34(g) (Department of Labor) (same); 38 C.F.R. § 61.64(c) (Department of Veterans Affairs) (same); 42 C.F.R. § 54.4 (SAMHSA).

The last cited regulation relates to TANF, which, as noted above (p. 7), requires that a participant objecting to a religious provider be offered an acceptable alternative provider. One commentator on the original draft of these rules urged that they make plain that while participants await an alternative provider they not be penalized in any way. (TANF benefits are conditioned on participants either working or preparing themselves for gainful employment.) While declining to adopt specific language to this effect, the

Department of Labor agreed that a penalty of that sort would be impermissibly coercive:

> [U]nder the TANF Charitable Choice provisions, government may not compel an individual, through loss of public benefit or advantage, to profess a religious belief or to observe an inherently religious practice. Therefore, the State may not penalize an individual for requesting to receive a service from an alternative provider because he or she objects to the religious character of the organization or institution from which he or she receives or would receive the service.

(68 Fed. Reg. 56,460, September 30, 2003).

Similar comments accompanied promulgation of other of the rules listed above. See, *e.g.*, 69 Fed. Reg. 31,885 (June 8, 2004) (Department of Veterans Affairs); 68 Fed. Reg. 56,431-34 (September 30, 2003) (*id.*, 56,434) ("[i]t is well established that government may not compel an individual through material penalty or advantage to profess a religious belief or to observe an inherently religious practice").

All of this statutory and regulatory authority stems from a clear-eyed recognition of what the courts below blurred: that the ban on coerced participation in a religious activity which lies at the core of the Establishment Clause remains vigorous. This Court should correct the Michigan courts' failure to enforce that principle.

III. THE EXPLOSIVE GROWTH IN DRUG COURTS AND THEIR USE OF COERCIVE MEASURES TO COMPEL DRUG REHABILITATION ADD TO THE IMPORTANCE OF THIS CASE

The importance of this case lies not only in the legal principle implicated. Drug courts, that is, quasi-criminal courts which divert cases involving drug use from the regular criminal justice system, are a nationwide phenomenon of increasing importance. There are at least 1,100 drug courts in operation, and this number is growing rapidly. Drug Courts: A National Phenomenon (National Drug Court Institute, American University 2004) ("National Phenomenon") (available at http://www.dci.org/courtfacts. htm, last visited May 19, 2005). The most recent data shows that over 70,000 Americans pass through these courts every year. Drug Court Activity Update: Summary Information on All Programs and Detailed Information on Adult Drug Courts (OJP Drug Court Clearinghouse and Technical Assistance Project) (2001) at 2.

The success of these courts lies precisely in their ability to coerce persons like Hanas to enter and remain in drug rehabilitation long enough to benefit from the treatment. "A drug court's coercive power is the key to admitting drug-involved offenders into treatment quickly, for a period of time that is long enough to make a difference." National Phenomenon, *supra*, at 3-4.

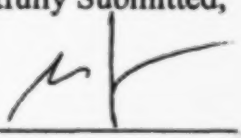
These courts are largely invisible to the appellate courts. The large number of discretionary decisions made (as here) without written opinion make it all the more urgent that this Court decide whether that discretionary authority may be

exercised in what would appear to be a violation of the Constitution.

CONCLUSION

For the reasons stated, a writ of *certiorari* should issue to review the judgment below.

Respectfully Submitted,



Marc D. Stern
Counsel of Record
American Jewish Congress
825 Third Avenue, Suite 1800
New York, New York 10022-7519
(212) 360-1545 • fax (212) 758-1633
mstern@ajcongress.org

June 3, 2005